

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ERIC RACHNER, an individual, and DAVID )  
HULTON, an individual, )  
Plaintiffs, ) KING COUNTY SUPERIOR COURT  
vs. ) CAUSE NO. 11-2-34597-1SEA  
SEATTLE POLICE DEPARTMENT and CITY )  
OF SEATTLE, a Washington municipal )  
corporation; MICHELE LETIZIA and JANE )  
DOE LETIZIA and the marital community )  
composed thereof; BRETT SCHOENBERG and )  
JANE DOE SCHOENBERG, and the marital )  
community composed thereof; and SETH )  
DIETRICH and JANE DOE DIETRICH and the )  
marital community composed thereof; )  
Defendants. )  
)

## VERIFICATION

The undersigned hereby declares the following:

1. The undersigned is counsel for defendant City of Seattle.

2. Pursuant to CR 101(b), attached are true and correct copies of all records and proceedings in the Superior Court of King County, Washington, received by defendant City of Seattle in the above-entitled action, Cause No. 11-2-34597-1SEA;

Exhibit      Document

## 1 Plaintiff's Complaint;

## 2 Order Setting Civil Case Schedule

### 3 Case Information Cover Sheet and Case Assignment Designation;

## 4 Summons;

## 5 Notice of Appearance;

6 King County Superior Court Docket, Cause No. 11-2-34597-1SEA.

DATED this 18<sup>th</sup> day of October, 2011.

PETER S. HOLMES  
Seattle City Attorney

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*s/Dominique' L. Jinhong*  
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## Attorneys for Defendants

## EXHIBIT 1

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CITY OF SEATTLE  
MAYOR'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

ERIC RACHNER, an individual, and  
DAVID HULTON, an individual,

Plaintiffs,

vs.

SEATTLE POLICE DEPARTMENT and  
CITY OF SEATTLE, a Washington  
municipal corporation; MICHELE LETIZIA  
and JANE DOE LETIZIA and the marital  
community composed thereof; BRETT  
SCHOENBERG and JANE DOE  
SCHOENBERG, and the marital community  
composed thereof; and SETH DIETRICH  
and JANE DOE DIETRICH and the marital  
community composed thereof;

Defendants.

No. 11-2-34597-1 SEA

COMPLAINT FOR FALSE  
ARREST, MALICIOUS  
PROSECUTION, CIVIL  
RIGHTS VIOLATIONS  
AND SPOILATION OF  
VIDEO EVIDENCE

COME NOW plaintiffs and through counsel, allege as follows:

**INTRODUCTION**

1. This is a complaint for false arrest, malicious prosecution, and civil rights violations under 42 USC 1983, arising from individual defendants' October 18, 2008 illegal stop, search and arrest of plaintiffs, later malicious prosecution of plaintiffs, and fabrication of evidence and loss or concealment of video showing the truth, all facilitated and caused by the policy and custom of the City of Seattle ("City"), through its Seattle Police Department (SPD), to

COMPLAINT FOR FALSE ARREST, MALICIOUS PROS.,  
CIVIL RIGHTS & SPOILATION OF VIDEO EVIDENCE - 1

**CLEVELAND STOCKMEYER PLLC**  
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Seattle WA 98103  
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1 abuse citizen rights and to fail to properly discipline and supervise officers, including through  
2 various SPD policy and customs to conceal videos showing officer misconduct, to falsely tell  
3 people videos do not exist when they do, and to conceal logs about videos and other information  
4 needed by citizens seeking to challenge officer versions of events by getting the SPD videos of  
5 the encounter.

6 2. SPD has a policy and custom of ensuring its existing in-car video system is not  
7 used to show officer misconduct, including through allowing officers to not take video of most  
8 encounters, and allowing a 80% violation rate of the regulations requiring officers to take video;  
9 policy to conceal video, and make false statements that SPD has no video, when it does; SPD  
10 policy to conceal in nearly every case since 2001 the activity logs for video, that show the  
11 existence of video or acts of concealment or loss of video, or spoliation of video evidence; SPD  
12 policy to conceal that its system often loses video suddenly, and it has had multiple sudden  
13 losses of video, including a loss of some 14,221 videos in December 2008; and other policies to  
14 ensure the video system is used to conceal officer misconduct rather than reveal it.

15 3. Such policies and customs turned the video system into a system of nondisclosure  
16 and concealment of misconduct, violating clear promises to the public that the in-car video  
17 system would be used to assure proper conduct by officers. Rarely since 2001 have notable  
18 events of officer misconduct been revealed through the SPD's in car video system; most were  
19 only revealed because third parties happened to get video. The policies and customs challenged  
20 in this suit are a massive failure to discipline and supervise, resulting from the institutional and  
21 high level subversion of the video system, that turned it into a means of hiding and concealing  
22 officer misconduct, rather than a way to reveal it and remedy it.

4. SPD also operates its Office of Professional Accountability in the same way: to facilitate and allow misconduct through wrongful exonerations, or not finding a citizen complaint is sustained (the term exoneration will be used herein to refer both to actual exoneration and OPA findings of not sustained); keeping exoneration files secret, and using OPA to officially legitimate wrongful conduct, as OPA did in plaintiff Rachner's case.

5. SPD accordingly has turned the two systems needed for effective officer discipline into systems that promote misconduct. Misconduct is promoted when officers know the video showing it will not come to light, or can be concealed, or only rarely will come to light; and OPA will exonerate, despite video showing wrongful conduct; as happened here.

6. OPA and the video system promoted misconduct by keeping it in the dark, instead of bringing it to light.

7. This suit seeks damages for plaintiffs, and injunctive relief to change these policies and customs and ensure that the video and OPA systems work as they are supposed to work: to reveal and remedy officer misconduct, rather than to conceal it.

## **PARTIES, JURISDICTION AND VENUE**

8. Plaintiffs Eric Rachner and David Hulton are each owners of computer security firms, and each separately resides in King County Washington.

9. Each plaintiff was falsely arrested on October 18, 2008 by defendant officers, then maliciously prosecuted due to efforts of defendants, until months later the City dismissed charges against plaintiffs in 2009.

10. During their prosecution and later, SPD repeatedly denied plaintiffs videos of their arrests, which show the officers' wrongful conduct and the fabrication of false versions of events on the incident report.

1       11. Today, SPD is still concealing one or two videos of the arrest incidents, despite  
2 plaintiffs' numerous requests.

3       12. Defendant City is a municipal corporation; SPD is a department thereof and the  
4 City and SPD legally "reside" in King County being located and doing business there.

5       13. Defendant officers Michele Letizia, Brett Schoenberg and Sergeant Seth Dietrich  
6 were or are at all relevant times employed by the SPD as police officers; at all relevant times  
7 they acted under color of law; on information and belief they reside in King County,  
8 Washington; and they falsely arrested plaintiffs on the night in question then maliciously  
9 procured their prosecution.

10       14. Letizia falsely arrested Rachner for obstruction, when Rachner lawfully refused to  
11 give his identification. Schoenberg falsely arrested Hulton, for assault, when there was no  
12 probable cause for said arrest, and the officers obtained a description that did not match Hulton.

13       15. Dietrich on information and belief screened and approved both arrests and falsely  
14 arrested both plaintiffs.

15       16. The three officers conspired to effect such false arrests, violate plaintiffs' rights,  
16 fabricate evidence including on the incident report, and hide and conceal video; and to procure  
17 the malicious prosecution of plaintiffs, acting intentionally and maliciously, secure in the belief  
18 that SPD policies and customs would assure video showing the truth would not come to light,  
19 giving the officer freedom to violate rights and fabricate evidence.

20       17. The wrongs complained of arose or were in King County Washington and  
21 concern public officers there, and jurisdiction and venue are appropriate in King County under  
22 RCW 4.24.020 and .025 based on parties' residence or place where the torts arose.

18. Plaintiffs have filed claim notices and waited 60 days prior to filing suit. Plaintiffs have waited until nearly three years from the false arrests because SPD has previously hidden and concealed from plaintiffs videos of their arrest and other evidence of conduct and custom which plaintiff Rachner has had to work to obtain, for years, overcoming SPD resistance at every stage.

## FACTS

## **SPD Policy and Custom To Violate Rights**

19. SPD has had a policy and custom to violate citizen rights, including false arrest, arrest for not giving identification, excessive force, and misuse of the obstruction statute, facilitated and maintained through policies making it difficult for the arrestee and others to obtain video of the events or remedy them through complaints to OPA. The policies and customs challenged in this suit were in place prior to 2008 and continue to the present, and allowed and caused the officers sued herein to violate plaintiffs' rights.

20. SPD had a policy and custom to violate a citizens' right to not give identification.

21. Since 1982 in Washington State an officer cannot lawfully arrest a citizen not driving a vehicle for his or her refusal to give identification; this was clearly established in *Miranda v. Arizona*, 384 U.S. 436 (1966); *Terry v. Ohio*, 392 U.S. 1 (1968) (“refusal to answer furnishes no basis for an arrest”) and particularly in *State v. White*, 97 Wn.2d 92 (1982) (“detainee’s refusal to disclose his name, address, and other information cannot be the basis of an arrest”); then again in *State v. Hoffman*, 35 Wn.App. 13 (1983) (refusal to produce identification after lawful Terry stop is not obstructing); and other cases including *State v. Biegel*, 57 Wn.App.192 (1990) (right to silence includes being silent as to one’s identity).

1       22.    SPD has had a policy and custom to violate *State v. White*; to fail to properly  
2 teach officers about the right to not give identification; and to fail to discipline officers who  
3 violate said rights; and to wrongfully exonerate said officers in OPA investigations in such cases  
4 when citizens complain, even where video shows the officer misconduct, thus officially  
5 implementing the illegal policy to arrest for not giving identification.

6       23.    The SPD officer manual and training is and was improper and defective, failing to  
7 give officers the *White* case rule, or discuss the right to not give identification.

8       24.    The portion on “Social Contacts, Terry Stops, and Arrests” is only 4 pages and  
9 was so in 2008; it states in section 6.220 entitled “Social Contacts, Terry Stops, and Arrests” that  
10 “If the individual being questioned fails to accurately identify themselves or if information is  
11 gathered to further validate the officer’s suspicion, the detention may be extended,” without  
12 discussion of the right to not give identification; and this is an official policy that officers may  
13 arrest and detain for refusal to give identification.

14       25.    SPD has had a policy and custom of allowing officers to misuse the obstruction  
15 statute, including interpreting at their discretion, making false arrests, arresting for not giving  
16 identification, and arresting people for lawful speech to officers including protest of illegal  
17 officer actions or misconduct or questioning same a/k/a “contempt of cop.”

18       26.    Sergeant Sean Whitcomb is a policy maker for SPD when speaking for the  
19 department to the media and officers may take his statements as official policy. In April 2010,  
20 Whitcomb stated to reporter Eric Nalder that SPD officers are allowed to interpret obstruction  
21 statutes according to their own “point of view”; this was official policy that officers may abuse  
22 the obstruction statute.

1       27. On information and belief, SPD has often arrested persons for refusing to give  
2 their identification in years prior to 2008, then SPD has exonerated or failed to properly  
3 discipline such officers or teach them the rule of *White*.

4       28. In 13 months prior to and including October 2008, this happened repeatedly  
5 including the following on incident reports and known to SPD leaders: (a) 07-409252, Angelo  
6 Peterson when picking up a jacket on the street, arrested for not giving identification ; (b) 07-  
7 441371, unknown person near suspicious persons, arrested for not giving identification; (c) no.  
8 07-466197, process server arrested for not giving identification; (d) no. 08-290457, Jeremy Peck,  
9 arrested for not giving identification; (e) no. 08-335821, Howard Mulvihill, arrested for not  
10 giving identification; (f) 08-341044 SPD accosts man then arrests for not giving identification;  
11 and (g) 08-392375, arrests of Rachner and non-party Adam Currie for not giving identification.

12       29. On information and belief, wrongful arrests for not giving identification occurred  
13 at similar or higher rates and were shown on incident reports for years prior to October 2008 and  
14 were known to SPD leaders.

15       30. SPD officers illegally threatened citizens with arrest for not giving identification  
16 in many other cases; with SPD then exonerating or failing to properly discipline such officers;  
17 this is shown on incident reports and known to SPD leaders.

18       31. SPD has had a policy and custom of allowing and facilitating excessive force; this  
19 is part of and causes the policy and custom of wrongful arrests without excessive force, too.

20       32. In 397 excessive force complaints to OPA, from January 1, 2008 to about May  
21 2011, OPA found no misconduct or exonerated the officer 100% of the time. On information  
22 and belief, many such findings were wrongful, and a 100% rate of non-sustained findings is “too  
23 good to be true,” and indicates the OPA system was dysfunctional and covering up misconduct.

1                   **SPD Policy and Custom to Use Video System to Conceal Misconduct**

2                   33.     SPD has had a policy to allow and foster such abuses of citizens through policies,  
3 practices and misfeasance concerning the in car video system, including allowing massive failure  
4 to take video by officers, concealing video, losing or spoliating tens of thousands of videos, and  
5 hiding and concealing activity logs in nearly every case since 2001, where such logs show acts of  
6 concealment, loss or spoliation of video or other facts SPD should have disclosed.

7                   34.     SPD knew, and told the public, the in car video system was needed for and would  
8 operate to ensure officers did not commit misconduct. SPD leaders knew for this to happen,  
9 SPD would have to overcome officer resistance to videos; and ensure videos were taken, and  
10 then disclosed, to persons challenging officer versions of events.

11                  35.     SPD then implemented the system and related practices to ensure videos are not  
12 made, or kept, or are concealed and not disclosed to persons claiming video will prove officer  
13 misconduct. SPD subverted the purpose of the in car video system and turned it from a system  
14 to disclose and remedy misconduct, into a system that operated to conceal and promote  
15 misconduct.

16                  36.     SPD since 2001 has spent millions of dollars on the video system.

17                  37.     SPD told the public the system would help assure officers behave properly many  
18 times, including the following: (a) On February 25, 2002 Deputy Chief John Diaz, then  
19 commander for the new video system, told the public that the video system was “a way to  
20 increase community confidence in the department” (see  
21 [http://www.seattlegov/mayor/newsdetail.asp?ID=2462\\$dept=40](http://www.seattlegov/mayor/newsdetail.asp?ID=2462$dept=40)); (b) Mayor Nickels stated in a  
22 press release of July 18, 2002 that the video system was a “strategy to enhance police  
23 accountability and improve police-community relations; he stressed video in “ALL patrol cars”

1 was to “improve public confidence and trust in our police”; “The goal is simple: increased  
 2 accountability” (see <http://www.cityofseattle.net/mayor/newsdetail.asp?ID=2784&dept=40>); (c)  
 3 elsewhere this release stated a goal of the project was to “Ensure accountability”; (d) the SPD  
 4 Manual for officers in section 17.260 captioned “In-Car Video” stated an official purpose of the  
 5 system is “To establish video data accountability”; and (e) on August 20, 2007, chief Gil  
 6 Kerlikowske wrote a memo to the Mayor’s Police Accountability Review Panel, stating in  
 7 response to citizen complaints about officer misconduct, “In-car video cameras were installed.”

8       38. Prior to installation SPD command knew, and it was true that many officers had  
 9 opposed installation of the video system fearing it would work as intended; and officers knew if  
 10 they were allowed to not take video or could hide it, or if the system did not disclose video to  
 11 persons challenging officer versions of events, the system would not work as intended to disclose  
 12 officer misconduct.

13       39. Since 2001, officers have resisted attempts to have greater disclosure and SPD has  
 14 had until 2011, a policy to bar disclosure of video to supervisors absent a formal discipline  
 15 charge; in normal practice a supervisory officer was by policy not permitted to review videos  
 16 made by a subordinate.

17       40. SPD has had a policy and custom that allows officers to simply not take video.

18       41. The SPD officer manual required video to be made in most encounters with  
 19 citizens, and required officers to note existence of video in incident reports. Section 17.260  
 20 thereof states “Officers will activate the video equipment, including microphone, prior to  
 21 making citizen contacts”; “If reasonable to do so, they [officers] will record their approach to  
 22 crime scenes”; “Before starting patrol, the video camera will be positioned to properly record  
 23 traffic stops, and the wireless microphone will be synced to that camera unit and attached to the

1 officer's person in a manner suitable for its most effective use"; "the officer with the operational  
2 microphone will be primary, whenever feasible" and "When a custodial arrest is made, the  
3 General Offense report will indicate the contact was recorded." In practice, though, SPD has had  
4 a policy and custom of allowing officers to *not* take video, or if it is taken to not upload it, or to  
5 not report it on incident reports, all to facilitate officers to avoid taking video, or to hide video,  
6 and defeating the purpose of video to show officer misconduct.

7 42. SPD created this policy and custom by allowing massive failure to take or note  
8 video, and not imposing significant discipline in response to violations of such regulations. After  
9 2001 SPD often allowed up to one third or one quarter of officers in patrol cars to simply not  
10 take video on the ground they did not have video training.

11 43. This and the failure to enforce regulations requiring video told all officers that  
12 video is optional; this allows officers committing abuses to either not take video or to conceal it  
13 if they took it and it would show misconduct.

14 44. There are at SPD 229 incident reports for all obstruction arrests in the period  
15 October 2007 to January 2008. In these reports there are 131 reports by officers in patrol cars,  
16 that is, with video; and in this subset, some 109 reports do not state there was video.

17 45. This is an 83.9% violation rate of the above mentioned regulations.

18 46. This was known to SPD leaders who did not take proper action in response.

19 47. On information and belief, the same or similar 84% violation rate took place and  
20 was evident to leaders, in other periods since installation of the video system.

21 48. Obstruction like many other crimes happens in the presence of an officer.

22 49. Under the video regulations the vast majority of obstruction arrest reports should  
23 indicate there is video; yet most indicate there is not; and SPD leaders knew this.

1       50.    SPD leaders in allowing 84% of all obstruction arrest reports to not note video,  
 2 created a policy giving officers the option to not take video, allowing officer abuses, and  
 3 contrary to the promise to citizens.

4       51.    In October 2007 SPD leaders changed the incident report form by removing a box  
 5 for noting existence of video on the form. This helped officers to not take video, or to not note it  
 6 on the form. That video is not noted on the form leads citizens to not seek video even if it exists.

7       52.    When video is made, SPD has had a set of policies and customs to conceal, lose,  
 8 destroy or hide video and facts about video, and to not disclose video or to hinder and burden  
 9 attempts to get video; to ensure the system does not reveal misconduct.

10      **Policy & Custom to Conceal Video, Activity Logs and Loss of Thousands of Videos**

11      53.    SPD has had a policy and custom to falsely conceal video when it is requested,  
 12 including without limitation failing to provide video and stating video does not exist, when it  
 13 does; refusing to disclose the activity logs for video in most cases since 2001  
 14 including where such logs would show video does exist when SPD said it does not exist; failing  
 15 to disclose copies of video given to OPA or city attorneys; falsely or incorrectly stating there is  
 16 no video when SPD does have video on the hard drive or in a copy; failing to have proper  
 17 policies to look for video; not allowing public records officers or attorneys look on the activity  
 18 logs; improperly disclosing some but not all video; failing to tell citizens the SPD system lost  
 19 thousands of videos; falsely using signatures of policy makers such as John Diaz to bolster  
 20 credibility of false statements there is no longer any video; or similar acts of concealment, false  
 21 and incorrect statements and nondisclosure of video or activity logs.

22      54.    The activity logs are the electronic files showing if a video is on the system or not  
 23 or if it was lost or removed. They thus are key to acts of concealment or loss or spoliation of

1 video by SPD. They show SPD had video previously or when it was requested and thus are the  
2 key item of evidence to show SPD wrongfully failed to disclose or concealed video, or video was  
3 removed or lost.

4 55. The logs also show data such as dates of video creation, when officers viewed  
5 video, if they were copied (“exported”) and to whom (e.g, to OPA or city attorneys) (thus  
6 showing where the City has copies) and information about a case useful to a defendant.

7 56. SPD since 2001 has had a policy and custom to not disclose and to hide the  
8 existence of activity logs from the public, the media and persons challenging officer versions of  
9 disputed events. This was , to help ensure the video system is not used to show officer  
10 misconduct, in particular, by hiding and concealing SPD’s concealing or nondisclosure of videos  
11 and loss and spoliation events.

12 57. Activity logs were requested in thousands of cases wherever a request is made for  
13 all information or electronic information about an arrest, yet SPD routinely did not disclose  
14 activity logs.

15 58. The logs show existence of a video, badge number of the officer creating the  
16 video; removal or loss or corruption of video; retention command; badge numbers of officers  
17 reviewing videos and when; and a notes or narrative field containing individualized data or  
18 comments about the incident by the officer creating the video.

19 59. Oftentimes disclosure of logs was required when SPD did not disclose them in  
20 thousands of cases.

21 60. This policy of not disclosing logs and concealing them frequently operated to  
22 deprive defendants or citizens of information needed to show officer misconduct or defend a  
23

1 charge, and violated disclosure obligations or obligations under *Brady v. Maryland*, 373 U.S. 83  
2 (1963).

3 61. On information and belief, SPD has not disciplined any officer for the failure and  
4 refusal to disclose activity logs.

5 62. SPD has had on information and belief a policy and custom to keep videos and  
6 the logs concealed from city attorneys and public records officers, who do not even review logs  
7 to see if videos exist or were copied.

8 63. SPD has had a policy to have only a small handful of video unit officers look at  
9 logs. This allows SPD to frequently say there is no video when there is, because public records  
10 officers or attorneys and others not wearing a uniform are not allowed to look at the logs.  
11 Alternatively, SPD only has allowed such people to look at logs recently.

12 64. SPD has lost tens of thousands of videos from its system. SPD has concealed  
13 this type of spoliation of evidence event from the public, the media and persons seeking video.

14 65. Since installation, SPD's video system has often experienced sudden non-routine  
15 loss, or willful destruction, of video, each year. Since 2001 SPD has suddenly lost or had  
16 removed tens of thousands of video and has failed to tell the public this.

17 66. At the end of December 2008, the SPD video system lost 14,221 videos suddenly  
18 or they were on information and belief removed improperly from the system.

19 67. At that time 14,221 videos were 22% of the videos extant on the system.

20 68. SPD has hidden this fact from the public and defendants who might need those  
21 videos to prove what happened in their encounter with officers, or who might be able to point to  
22 the fact SPD *lost* the video, as an exculpatory circumstance or evidence that the City was  
23 required to disclose under *Brady*.

1       69.    In April 2009, the system lost 32,502 videos suddenly or they were improperly  
2 removed. These were later restored; and SPD on information and belief concealed these facts  
3 from the public or defendants.

4       70.    Other events of sudden video loss in the period July 2008 to July 2011 included:  
5 in December 2010 the system lost 1,008 videos or they were improperly removed; on January  
6 13, 14, 18, 19 and 22, in the year 2011, the system lost or there was improper removal of 78, 51,  
7 14, 29 and 39 videos respectively; and on June 24, 2011 the system lost or there was improper  
8 removal of 89 videos; and SPD has hidden these facts from defendants and the public.

9       71.    On information and belief, SPD lost videos or they were improperly removed at  
10 other times since 2001; at the same rates and frequency as in the July 2008-July 2011 period.

11       72.    SPD's concealment of logs that show loss or removal or concealment of video  
12 violated legal duties in many criminal cases; and was to cover up SPD's unlawful responses to  
13 citizen or defendant requests for video, violations of Brady obligations. Many persons would or  
14 could use such loss or concealment or spoliation events, to challenge officer versions of events,  
15 show their innocence, or after being convicted or in jail could still use such loss or spoliation  
16 events to overturn convictions or get out of jail.

17       73.    On information and belief, SPD has not properly disciplined and has not  
18 disciplined anyone for these massive loss or removal events or concealment of same.

19       74.    SPD has many other policies and customs to lose, or remove, video.

20       75.    SPD routinely destroys and purges log entries and corresponding videos three  
21 years after creation when it could easily keep such evidence; it does so to hide officer  
22 misconduct.

1       76.     By this practice, SPD routinely destroys evidence of prior concealment, loss or  
2 spoliation of video evidence; and that this is a policy or custom.

3       77.     SPD's policy to keep these video losses or removals concealed continues to the  
4 present despite SPD leaders being told by Rachner in 2010 that SPD has wrongfully concealed or  
5 failed to disclose video in other cases, and the logs are needed to audit this; SPD's continued  
6 purging of video and log entries is daily removing evidence that persons could use to show SPD  
7 wrongdoing.

8       78.     SPD has and is concealing and purging the log entries as part of the policy to  
9 cover up and conceal wrongdoing; this helps conceal prior violations of public disclosure laws or  
10 *Brady v. Maryland* obligations.

11       79.     SPD through purging log and video data that could be cheaply retained has had  
12 and today has a policy at the highest level, to conceal officer misconduct, conceal videos and  
13 conceal the concealment or loss of videos, all to prevent the system from being used to show  
14 wrongdoing by officers.

15       80.     In addition to loss or removal events and purging, SPD has had other routine and  
16 official policies to conceal or not disclose video or hinder those seeking it.

17       81.     SPD has had a policy and custom to not look at activity logs or for exported  
18 copies to see if video exists.

19       **SPD Policy to Not Disclose Video**

20       82.     SPD by policy or custom simply tries to deny access to video as much as possible,  
21 citing generic policies such as a policy that videos are only kept 90 days in denying requests for  
22 video, without looking for the video on the log; or by citing any potentially applicable exemption  
23 to disclosure on a blanket basis without individualized review; or wrongfully.

1       83.    For example, SPD routinely and by custom or policy denies any request for video  
2 about a third party. This helps ensure the media or citizens acting as watchdogs do not get hold  
3 of video showing officer misconduct.

4       84.    In this context where someone seeks video about someone else, SPD cites privacy  
5 reasons. But in fact often there is no privacy at stake as in the vast majority of cases, the video  
6 concerns non-private and public interactions between the citizen and the officer. SPD also cites  
7 effective to law enforcement without particularized review or other exemptions without proper  
8 basis.

9       85.    SPD has not properly funded nor trained its public records staff to make the  
10 system function as needed.

11       86.    On information and belief, the public records staff was not aware of the sudden  
12 loss of video when it happened, and was not even aware of the logs until Rachner discovered  
13 them then requested certain logs from public records staff in 2009.

14       87.    SPD also removes or destroys video as per routine practices including removal  
15 after three years and also eliminating all video 90 days after creation unless there is a pending  
16 criminal, civil, or administrative case.

17       88.    This deprives many people of video following suspected officer abuse. If the  
18 citizen is not charged and fails to demand video quickly, or is unaware or without means to pay a  
19 lawyer, or simply fails to hire a lawyer immediately, the 90 day rule works to ensure video is no  
20 longer available.

21       89.    SPD does not have a policy to honor where a citizen's demand video be kept.  
22 SPD has a policy to ignore and deny a citizen's demand that video be kept.

1       90.    SPD continuously destroys extant video located in the in car unit; the in car units  
2 continuously record video when the car is in use, and keep the video until overwritten which is  
3 sometimes days later.  SPD policy and custom is to both not look for video in this location, and  
4 to let this video be lost or spoliated routinely.

5       91.    Officer Benjamin Kelly's in car unit took video of his encounter with Maurice  
6 Clemmons on December 1, 2009.  SPD commanders later recovered that video from the unit in  
7 the vehicle using nonroutine efforts, because it had not yet been overwritten.  There was no  
8 system in place to look for this kind of video record, in the car.

9       92.    When a citizen complains about an officer and demands video, SPD policy and  
10 practice is to not look for video on the in car unit.

11       93.    The foregoing policies, practices and customs are part of the general policy and  
12 custom to prevent video from showing officer misconduct.

13       94.    SPD has not fired a single officer or imposed any serious discipline for  
14 documented cases of SPD or officer failure to take video, concealment of video, misstatements  
15 about video, concealment of logs, or loss of thousands of video, or concealment of said events  
16 from defendants or the public.

17       95.    On information and belief, SPD has a secret back up system that came into  
18 operation in or before April 2009 and that has not been disclosed to the public nor used to find  
19 video to respond to requests for video.  On information and belief in two days following the loss  
20 of 32,502 videos in April 2009, SPD was able to and did restore some 46,009 videos, including  
21 those suddenly lost in April and others that had been deleted under the 90 day policy.  SPD has  
22 kept these facts concealed to hide the backup system and to continue to conceal the recurrent  
23

1 losses of video. Said restorations are shown in data given to Rachner discussed below and could  
2 not happen unless there was some backup system.

3 96. On information and belief, SPD has not properly used such duplicate backup  
4 system to look for videos or disclose same.

5 **SPD Policy and Custom to Misuse OPA and Wrongfully Exonerate**

6 97. SPD has had a policy or custom to misuse OPA to wrongfully exonerate officers,  
7 set policy allowing illegal acts and keep exonerations files secret from the public, to ensure  
8 officer conduct is validated wrongfully or keep misconduct from coming to light.

9 98. In 2001, SPD created the Office of Professional Accountability to help assure  
10 officers would act properly to citizens.

11 99. SPD and the City at that time set an official policy to not let OPA files leading to  
12 exonerations be disclosed, and such files have not been disclosed.

13 100. The City and SPD have an official policy and custom including under SMC  
14 3.28.800 and otherwise, to keep files leading to exonerations concealed; and even that OPA must  
15 maintain confidentiality of files as if OPA were in an attorney client relationship with the  
16 officers.

17 101. This and other practices deprive OPA of independence and put the focus on  
18 keeping OPA in the function of serving officers, not the public, and keeping exonerations secret  
19 including wrongful exonerations.

20 102. SPD has kept OPA work or as much of it as possible secret and does not disclose  
21 to citizens or the media, OPA files exonerating officers.

22 103. OPA as official source of discipline officially sets policy at SPD.

1 104. On information and belief, OPA wrongfully has exonerated many officers or  
2 imposed slight discipline; and legitimated misconduct, by declaring it is in accord with policy.

3 105. Such policies and customs facilitate and protect officer misconduct and sets  
4 policy to allow wrongful acts.

5 106. OPA investigated complaints about arrest for not giving identification many times  
6 prior to October 2008, and since, and on information and belief, has rejected the citizen's  
7 complaint, exonerated, or failed to reach a finding of "sustained," in all or nearly all cases,  
8 setting an official policy to allow such unlawful arrests.

9 107. By making the OPA disciplinary function largely secret and not independent, SPD  
10 has created a culture of secrecy that allows misconduct to flourish in the dark, and a defective  
11 and improper system of discipline.

12 **Illegal and Malicious Stops, Arrests and Prosecution of Rachner, Hulton, Currie**

13 108. The above policies and customs caused the wrongful acts directed at plaintiffs.

14 109. On October 18, 2008, on Boylston Avenue, in Seattle's Capitol Hill  
15 neighborhood, plaintiffs Rachner and Hulton, and non-party Adam Currie were falsely arrested  
16 by the individual defendant officers.

17 110. That night, plaintiffs and others were participating in Urban Golf, a group activity  
18 in which plaintiffs and others peacefully assembled, many in expressive retro attire, and walked  
19 from bar to bar, in small teams of about four or five, putting toy foam balls short distances, on a  
20 marked course on sidewalks. This conduct and attire expressed countercultural values or values  
21 of Capitol Hill urban life, active use of urban space, as compared to commercial or passive  
22 entertainment. Plaintiffs engaging in this activity with this group were engaged in expressive  
23

1 conduct protected under the First Amendment and the due process liberty interest of walking  
2 about the city in which they lived.

3       111. The conduct was not dangerous or disruptive, nor criminal. The toy balls rolled  
4 on the sidewalk and any occasional lift given to a ball did not create appreciable danger. The  
5 balls used were the kind sold to children for them to shoot at each other.

6       112. One Marcus Johnson gave his ball some lift and it lightly impacted Gabriel Clark  
7 without injuring him nor assaulting him, comparable to a negligent bump given on the shoulder  
8 by a passerby. Gabriel Clark spoke with Johnson and was angry as apology was not made.  
9 Clark called 911 and complained about the group in general without claiming assault or  
10 identifying any “suspect.” The SPD person taking the call did not even ask for an identification  
11 of any suspect.

12       113. SPD’s officers Letizia, Emily Clark, and Schoenberg arrived. Then, officer Jose  
13 Silva arrived a few minutes later, followed by officers Benjamin Archer and Dietrich.

14       114. On information and belief, officers arriving first, that is, Letizia, Clark and  
15 Schoenberg, started off by violating the video regulations in failing to activate the retain function  
16 on their in car units so as to record their conversation and events from the start. Their videos  
17 were turned on after they arrived at the scene.

18       115. The officers spoke to Gabriel Clark but did not get any identification of any  
19 suspect at that time.

20       116. At 8:05:54 pm (all indications of time are taken from videos later obtained) they  
21 unlawfully stopped and seized by show of force a group of Urban Golfers including Rachner and  
22 Hulton. This was illegal and lacking reasonable suspicion or probable cause; and said officers  
23

1 were acting intentionally and maliciously to violate clearly established liberty and speech rights  
2 to punish Urban Golf and its expressive speech activity.

3 117. The detention came with the officers driving up to the group with overhead lights  
4 on (indicating the video was only then turned on) and other show of force.

5 118. At 8:06:38 pm, Officer Clark told Letizia that Rachner would not answer  
6 questions and Letizia said, "Cool, that means we get to arrest him and let him go before a judge."  
7 By this Clark and Letizia violated his right to silence; silence is not a crime.

8 119. Letizia then said to Rachner, "Today is Saturday, you won't see a judge 'til  
9 Monday." This was a threat to arrest Rachner for not speaking and violated his clearly  
10 established right to silence.

11 120. At 8:11:57 p.m., Schoenberg told the group, "I don't know why you guys come to  
12 Capitol Hill to do this, I understand it's part of the Capitol Hill experience, however it's not  
13 going to be any more." This comment is audible on the videos made by Letizia and Clark. This  
14 was an illegal order to the group to stay out of Capitol Hill and was unlawful suppression of their  
15 First Amendment rights and procedural and substantive due process rights.

16 121. Schoenberg's direction was backed by the other officers' show of force, and by  
17 doing so they joined in his unlawful acts. Each knew that Schoenberg's order violated the  
18 group's clearly established rights and failing to stop such violations, joined in, thereby violating  
19 said rights and agreeing and helping do so.

20 122. Subsequent wrongful actions of the officers were to implement the order to stay  
21 off Capitol Hill to punish the expressive acts of Urban Golf and create some kind of criminal  
22 guilt to discredit plaintiffs should they speak up about this.

23

1       123. After this seizure, and at 8:08:50 pm, officers Letizia, Schoenberg and Emily  
2 Clark talked to Gabriel Clark, who described the person whose ball had impacted him, saying,  
3 “He’s a little bit thicker [than me], like my height, with a stocking cap”; this description is shown  
4 on the tape made by officer Clark.

5       124. Attached hereto as Exhibit A is a true and correct copy by screen shot from the  
6 officer Emily Clark video at the time that Gabriel Clark gave the description (8:08:50 pm).

7       125. Exhibit A is a fair and accurate depiction of the scene at that time and place, and  
8 correctly shows Letizia, Rachner, Schoenberg, Emily Clark, and Gabriel Clark (in that order,  
9 from left to right) at 8:08:50 pm; and the audio on this video indicates at this time Gabriel Clark  
10 is giving the description mentioned above.

11       126. Officers did not seek out a suspect matching that description at any time nor get  
12 Gabriel Clark to identify Hulton or anyone else. At the time of the description, Rachner was  
13 standing near Letizia as shown in Exhibit A. At this moment, while Gabriel Clark is describing  
14 the alleged suspect, Gabriel Clark could see Rachner yet did not point to Rachner nor say he was  
15 the suspect, nor describe anyone matching Rachner. Letizia at this time had no basis to restrain  
16 Rachner.

17       127. The description given by Gabriel Clark did not match Rachner or Hulton or  
18 Currie, objectively. Gabriel Clark’s height was 5’ 7” and he weighed about 180 lbs. Rachner’s  
19 height was 6’1”, and his weight was 155 pounds. Rachner was half a foot taller, and some 25  
20 pounds less than, the person described by Clark; Hulton was about 5’11”, and weighed 140  
21 pounds; and was four inches taller, and some 40 pounds less than, the person described by Clark.  
22 Both Rachner and Hulton had no cap or hat and Hulton also was Asian American and wore  
23 glasses. Clark did not say the “suspect” was Asian or Asian American or wore glasses.

1       128. The mismatch between the description and Rachner or Hulton is shown on the  
2 videos of the incident.

3       129. The unlawful detention continued even after Letizia, Schoenberg and Clark had  
4 the description.

5       130. The description constituted additional objective information precluding any  
6 probable cause or reasonable suspicion.

7       131. At 8:09 pm, Letizia furthered the illegal conduct, saying to Schoenberg and Clark,  
8 “You can just ID everyone and report them all as suspects.” Schoenberg said “We really want to  
9 get all their ID’s, get ‘em, want to help me collect them?” These orders violated plaintiffs’ and  
10 the group’s rights under the First, Fourth, Fourteenth and Fifth Amendments. The officers knew  
11 they were violating such clearly established rights and their colloquy recorded on the video  
12 reflected the violation, their knowledge and their joint agreement to violate rights by illegally  
13 getting identifications and illegally reporting them all as suspects without individualized  
14 probable cause. The officers acted in concert and by agreement to violate plaintiffs’ rights, and  
15 knew the video showed this.

16       132. At 8:09:46 pm Letizia told Rachner, “Let me see your ID, go ahead and take your  
17 ID out of your pocket.” This was an unlawful search and order to produce the wallet contrary to  
18 *State v White*.

19       133. Rachner lawfully refused, saying Letizia had no legal right to get identification.

20       134. Letizia repeatedly unlawfully ordered Rachner to present his identification,  
21 saying, “I do have a legal basis, so go ahead and remove your ID from your pocket” and “You  
22 have to remove it”; Rachner repeatedly refused saying, “No,” and “I refuse,” and “I will do no  
23 such thing.”

1       135. Rachner was courteous, and did not obstruct any officer nor consent to any  
2 search. Rachner's speech was First Amendment protest, petition and expression. It angered  
3 Letizia who viewed it as contempt of cop and who then acted maliciously to punish Rachner for  
4 this speech.

5       136. At 8:10:05 pm, officer Emily Clark observed this and said "I love it, I love it"  
6 approving and ratifying Letizia's unlawful acts and failing to stop them. She thereby joined in  
7 violating Rachner's clearly established rights by agreement with Letizia and in a concert of  
8 action and conspiracy to violate his rights.

9       137. Letizia said "if you refuse to give me your ID, then we will arrest you for  
10 obstructing," then unlawfully searched Rachner by taking his wallet out. Letizia then falsely  
11 arrested Rachner at 8:11:27 pm. Said acts were an unlawful search and seizure and arrest, done  
12 maliciously to punish Rachner for his verbal assertions of rights, and being part of Urban Golf.

13       138. Letizia and the other officers all knew of the clearly established right to remain  
14 silent, and not give identification, to not be subject to unreasonable searches and seizures, the  
15 liberty right to go about the City without being ghettoized or limited as to place, or based on  
16 expressive activity, and the right to speak up to an officer with correct statements of the law;  
17 each acted intentionally and maliciously to violate plaintiffs' clearly established rights.

18       139. At 8:11:27 pm, Schoenberg saw Letizia's arrest of Rachner and said "hey we can  
19 always take him down, and he can go to the fingerprints section [for us to get his identification]."  
20 With this approving comment and failure to stop the violation of Rachner's rights, he joined in  
21 and agreed with Letizia to violate Rachner's rights widening the conspiracy.

1 140. At about 8:17:05 pm, Letizia told officer Jose Silva that Letizia had arrested  
2 Rachner because Rachner had acted “edjumicated.” Letizia knew this was on the video and  
3 showed his improper motive to retaliate against Rachner and unlawful arrest of Rachner.

4 141. Silva by failing to stop the violation of Rachner’s rights joined in and ratified said  
5 violations joining the agreement and conspiracy to violate rights.

6 142. At 8:18 pm Schoenberg told Letizia “I got the one guy who was actually, did the  
7 assaulting.” Letizia replied, “Oh, you found him?” and Schoenberg said, “Mr. Hulton, yeah.”

8 143. The above comments are shown on video Rachner has obtained but he has not  
9 obtained the Schoenberg video.

10 144. The Schoenberg video on information and belief shows Schoenberg’s lack of  
11 probable cause for arresting Hulton, and that the real reason for the arrest was Hulton’s speaking  
12 up to Schoenberg, and Schoenberg’s and the other officers’ animus towards urban golf, and said  
13 video has information and commentary by Schoenberg indicating his motivations were malicious  
14 and to punish Hulton for not admitting guilt and to expel urban golf from Capitol Hill.

15 145. Schoenberg’s unit was recording audio and video and his overhead lights were on.  
16 The Schoenberg video was on information and belief spoliated, lost or concealed by SPD,  
17 although it was on the server or the in car unit; or it was not uploaded to the server or  
18 Schoenberg uploaded said video with an identification number of another officer, and/or the  
19 officers sued herein conspired to conceal said video.

20 146. Schoenberg was primary officer at the scene.

21 147. As shown on other video obtained, Schoenberg approached Hulton, accusing him  
22 of assault, saying “we know you did it.” Schoenberg detained him by putting him on the squad  
23

1 car then at 8:25:55 pm Schoenberg falsely arrested Hulton for assault without probable cause and  
2 put him in the squad car.

3 148. Schoenberg acted intentionally and with malice, motivated by animosity to the  
4 group's expressive conduct, and in violation of what he knew were Hulton's clearly established  
5 rights under the First, Fourth, Fifth and Fourteenth Amendments.

6 149. Dietrich arrived at 8:20:15 pm. At 8:21:53 pm, Letizia told Dietrich that Rachner  
7 "here is educating me on the legal system" and "challenging the detainment, doing all that stuff."  
8 Dietrich thus knew the basis of the arrest was Rachner's refusal to identify himself. At 8:23:38  
9 pm Letizia told Dietrich, "they have actually been able to identify the one that launched the ball  
10 into the guy's face."

11 150. Dietrich screened and approved Letizia's arrest of Rachner, despite being told it  
12 was for refusal to give identification and despite being told by Letizia Rachner's misdeed was  
13 informing Letizia about the legal system.

14 151. Dietrich said at 8:24:44 pm, "We can ID him at the precinct, he's going to go to  
15 the precinct." Dietrich knew the arrest of Rachner violated his clearly established rights and by  
16 approving this arrest, and not stopping it, Dietrich joined in the concert of action and conspiracy  
17 to violate rights and suppress Rachner's speech.

18 152. Dietrich at 8:26 pm, detained a smaller group of Urban Golfers standing nearby  
19 that included Adam Currie. This was unlawful lacking reasonable suspicion as among other  
20 things, Dietrich had been told and believed the "suspect" (Hulton) was in hand; thus there was no  
21 suspect to be looking for any longer. He acted out of malice to suppress the expressive conduct  
22 of Urban Golf and back up the prior order to stay out of Capitol Hill.

1       153. Dietrich unlawfully demanded identification from Currie, knowing this was in  
2 violation of his clearly established rights. Currie refused, asserting he did not have to give  
3 identification. Dietrich unlawfully arrested Currie for obstructing an officer, at about 8:29 pm;  
4 lacking probable cause and intentionally and maliciously punishing Currie for speaking up, and  
5 thus he joined with other officer's in abusing these citizens in a concert of action and conspiracy  
6 to violate rights of plaintiffs, and the group.

7       154. At about 8:36:12 Letizia told an officer he had arrested Rachner for not giving  
8 identification and for Rachner's expressions to Letizia. The other officer said, "Well, you get  
9 what you ask for." Letizia thereby widened the circle of officers who knew the arrest violated  
10 the clearly established right to silence, and was for Rachner's speaking out.

11       155. At about 8:37 pm, Schoenberg spoke to Dietrich about Hulton. Dietrich said, "He  
12 doesn't seem to understand? Hook him up and take him to the station. Maybe that way he'll  
13 understand."

14       156. This was coercion of Hulton to "make him understand" that is, confess. This is a  
15 violation of what Dietrich knew was his clearly established right to silence, and to protest officer  
16 misconduct. Dietrich assisted in the arrest of Hulton joining in the illegal agreement to violate  
17 rights, motivated because the arrestees had the temerity to oppose officer misconduct.

18       157. Dietrich on information and belief approved the arrest of Hulton.

19       158. Dietrich failed to obtain a positive identification by Gabriel Clark of Hulton and  
20 lacked any probable cause to arrest Hulton.

21       159. Rachner, Hulton and Currie were put in handcuffs, taken to the precinct, and put  
22 in cells; the City later maliciously prosecuted each of them based on information and false  
23 information provided by defendant officers including a fabricated incident report.

1       160. The officers knew their illegal conduct and comments showing illegal motivations  
2 were on several videos; on information and belief, the officers sued herein conspired and acted in  
3 concert to conceal such video evidence, and to fabricate false version of events for the incident  
4 report, agreeing to not disclose the truth, so as to not undercut each other or the incident report;  
5 and by misinforming prosecutors they jointly procured the prosecution of plaintiffs, maliciously.

6       161. Urban Golf has ceased to function due to fear of additional illegal repression or  
7 false arrests by SPD.

8       162. At 8:54:00 pm, Letizia told another officer in the station house Rachner had been  
9 a “brainiac.” The officer responded, “Fine” and “We can play that game.” Letizia continued to  
10 widen the circle of approving officers, building and relying on the policy and custom of officers  
11 to abuse citizen rights, to punish citizens who speak up lawfully to protest officer misconduct.

12       **Conspiracy to Fabricate and Conceal Evidence**

13       163. Letizia knew these many facts and his own comments revealing his illegal  
14 motivations, were on video. He resolved to cover up the false arrest and misconduct through  
15 concealing video, and with other officers sued herein agreed illegally to jointly fabricate and  
16 conceal evidence of their illegal conduct, conceal videos, or not disclose them, and to support or  
17 write a false incident report, and wrongfully procure malicious prosecution of plaintiffs.

18       164. The officers knew they all had to join together in this conspiracy or else it would  
19 come undone. None could tell the truth, if some were fabricating a version of events to tell.  
20 They acted jointly and in concert, and in a conspiracy to fabricate evidence; and they thought  
21 they could get away with it because the policies and customs described above would ensure  
22 video would not come to light exposing the truth. They also knew OPA would exonerate even if  
23 video showed misconduct.

1       165. Letizia wrote incident report no. 08-392375 concerning these three arrests and  
2 intentionally made false statements therein to conceal or tamper with material evidence, as per  
3 the agreement with other officers sued herein.

4       166. Attached hereto as Exhibit B is a true and correct copy of the narrative section of  
5 the incident report signed and prepared by Letizia, which is contradicted by the videos of the  
6 arrest Rachner later obtained.

7       167. Letizia falsely did not note in his report that there was video of the arrests. This  
8 violated the above mentioned regulations. He knew that he and others made video including  
9 Clark, Dietrich, Silva, Schoenberg, and Archer and he knew it exposed his and other officers'  
10 unlawful arrests, dialogue between Letizia and Rachner, the timing and contents of the officers'  
11 getting a description from Gabriel Clark, comments about staying out of Capitol Hill, and the  
12 "edjumicated" and "brainiac" comments, and other comments and acts tending to show officer  
13 misconduct, conspiracy to violate civil rights and the gross violations of civil rights described  
14 above.

15       168. Letizia knew SPD did not punish or did not seriously punish a complete omission  
16 to record video, or a failure to note its existence, as per the above mentioned policies.

17       169. Letizia wrote on the incident report that, "After officers had collected I.D. cards  
18 from the group, [Gabriel] Clark responded to our location" and "Clark positively identified  
19 Hulton within the group as the golfer who had actually swung the golf club and struck him in the  
20 face with the ball. Hulton was arrested for assault."

21       170. This was sequence and version of events was false.

22       171. Gabriel Clark did not positively identify Hulton at any time. Instead, he gave a  
23 description of a suspect but that description did not match Hulton's appearance or dress. The

1 video and audio shows this, including the audio associated with the screen shot at 8:08:50 pm on  
2 the Letizia video, in Exhibit A.

3 172. All officers sued herein on information and belief knew of this fabrication on the  
4 incident report and acted in concert to keep this fabrication concealed.

5 173. Letizia omitted from the report the description Gabriel Clark gave, to conceal the  
6 fact his claim Gabriel Clark identified Hulton was false. Letizia omitted the conversation in  
7 which Gabriel Clark gave the description from the report because it shows there was no probable  
8 cause to arrest Hulton (or Rachner). Each other officer knew this, and knew video would show  
9 this fabrication and their wrongdoing .

10 174. Letizia wrote about the the stop of the smaller group containing Currie, as  
11 follows: "While officers were collecting I.D. cards from the initial group, a smaller group of  
12 people similarly dressed or carrying golf clubs walked to our location. Since officers had not yet  
13 identified if they had a suspect, officer(s) (including Sgt. Dietrich) called out to this group and  
14 asked them to walk over."

15 175. This statement was false and video shows this was false, because in fact when  
16 officers including Dietrich stopped the smaller group (which included Currie), they had not "not  
17 yet identified if they had a suspect" because in fact by then they already had identified and  
18 detained a suspect, that is, Hulton.

19 176. Schoenberg had told Letizia that the suspect (Hulton) was already detained;  
20 Letizia told this to Dietrich four minutes before Dietrich and the officers stopped the smaller  
21 group containing Currie; this is shown on the videos later obtained; the officers knew this and  
22 this is why they worked together to fabricate evidence and conceal video.

1       177. Letizia's falsehoods about officers not having a suspect when they stopped the  
2 smaller group were an attempt to fabricate a basis for that stop and for the subsequent arrest of  
3 Currie, when there was none as each officer knew.

4       178. Letizia wrote in the report that he believed that Rachner "was asking for  
5 permission to get his wallet (a common occurrence with intoxicated persons)."

6       179. This was false. The video later obtained correctly shows Rachner *never asked for*  
7 *permission to get his wallet*. Each officer sued herein knew that this fabrication would come to  
8 light unless they acted in concert to back up the fabricated stories and acted to conceal video or  
9 keep video out of the hands of anyone who would use it against them.

10       180. Letizia wrote in the report that "Rachner told me if I wanted his I.D., I would  
11 have to get it myself." In fact, Rachner did not make the statement alleged and Rachner did not  
12 consent to Letizia's search. Letizia wrote this to fabricate some defense for his wrongful actions.

13       181. Letizia and other officers sued herein on information and belief presented the  
14 fabricated version of events to city attorneys to get charges filed against plaintiffs and thus  
15 wrongfully and maliciously procured their malicious prosecution.

16       182. On information and belief, city attorneys never reviewed video of the arrests of  
17 plaintiffs before filing charges; the officers knew they would not as per a general custom of SPD  
18 to not give video in many cases and as per the policy and custom to hide video by not noting it  
19 on the incident report.

20       183. On information and belief, until recently SPD just gave city attorneys a case file  
21 without video in many cases.

22       184. The officers sued violated many regulations about video including not taking it,  
23 losing it, concealing it, conspiring to conceal it or lose it, not noting it on the incident report.

1 Schoenberg on information and belief did not upload or save his video to the video storage  
2 server. Letizia, Schoenberg and Clark did not record their approach or initial contact. Letizia  
3 did not record his first contacts with Rachner. Dietrich did not record his approach or contact  
4 with Currie that led to Currie's arrest. No superior at SPD reviewed the videos then took any  
5 action against the officers. They violated regulations and fabricated evidence freely.

6 185. On information and belief SPD has not disciplined any of these violations.

7 186. On information and belief, SPD had a custom or policy to allow officers to not  
8 record the first approach to the scene or talk with the citizen.

9 **OPA Complaint Causes Malicious Prosecution**

10 187. On October 28, 2008, Rachner complained his arrest was illegal in a letter to OPA  
11 citing *White*. On information and belief, the officers learned this and conspired to fabricate and  
12 conceal evidence; procured the prosecution of plaintiffs in response, to retaliate for this protest to  
13 OPA when said officers knew that it was clearly established right under the First Amendment.

14 188. The City filed obstruction charges against Rachner on December 4, 2009, and the  
15 City filed charges against Hulton at about the same time.

16 189. The City's prosecutions of plaintiffs was malicious; said prosecutions ended  
17 favorably for plaintiffs in 2009 when the City dropped charges.

18 190. As a proximate result of the false arrests and malicious prosecution and other  
19 wrongdoing complained of plaintiffs suffered insult, indignity, humiliation, emotional distress,  
20 economic loss and other damages, including spending money on defense fees and costs, and  
21 Rachner lost substantial business revenue, due to said wrongful conduct.

22 191. The wrongs against plaintiffs sued on in this complaint, were intentional and they  
23 are allowed to recover emotional distress damages.

192. The wrongs against plaintiffs sued on in this complaint were malicious and they are allowed to recover punitive and compensatory damages as allowed by law.

## **Plaintiffs Work 2009-2011 to Overcome SPD Concealment of Video, False Statements about Video, and Loss or Spoliation of Video Evidence**

193. During plaintiffs' arrests, six officers made video including Letizia, Dietrich, Silva, Clark, Archer and Schoenberg.

194. SPD repeatedly failed to disclose and concealed said video from plaintiffs.

195. After charges were filed against Rachner, he wrote to SPD asking that all video be preserved as it would prove the true facts about what happened. His lawyer also requested all material related to his arrest. SPD thereafter did not provide to him the videos of his arrest, nor the activity logs related to such video.

196. Plaintiffs finally obtained some video of the incident leading to their arrest only after they worked years using extraordinarily unforeseeable efforts and skill to finally discover activity logs exist, which forced SPD to disgorge some of said videos. To date SPD has only disclosed the Letizia, Dietrich, Silva and Clark videos and SPD is still today concealing the Archer video and on information and belief, a Schoenberg video.

197. Many of the detailed facts, quotes and the times shown above, are taken from the videos plaintiffs later obtained.

198. Plaintiffs initially requested all video or all information about their arrests during their criminal cases, and SPD wrongfully failed and refused to give them videos, or logs, even though SPD had activity logs clearly showing the videos existed.

1       199. The Clark, Dietrich and Archer videos were lost or removed from the system in  
2 the loss event on about December 31, 2008 but SPD had exported copies, as shown on the logs  
3 for said videos; and SPD concealed said copies from plaintiffs during their cases.

4       200. SPD also concealed the activity logs that showed both the loss events and the  
5 copying events, during plaintiffs' criminal cases.

6       201. SPD also wrongfully concealed from plaintiffs the facts that the SPD server lost  
7 some of the video, and that the system could lose video.

8       202. SPD violated *Brady* obligations to plaintiffs by not disclosing to them the videos,  
9 or that SPD had video or the loss events.

10       203. In April 2009, Letizia told Heidi Sargent, one of the assistant city attorneys  
11 prosecuting Rachner, that officers had not yet identified a suspect when Rachner was unlawfully  
12 detained, and that Rachner had acted "belligerent." Letizia told Eric Nalder, a reporter, that  
13 Rachner was arrested for more than merely refusing to show identification. These were false  
14 statements. Letizia by this continued to propound the falsehoods on the incident report and a  
15 version of events that was false, and which would have been shown false if plaintiffs had been  
16 given the video of their arrests.

17       204. This was to continue to procure wrongful prosecutions of plaintiffs and on  
18 information and belief Letizia continued to conspire with the other officers sued herein to  
19 mislead others and procure a malicious prosecution, fabricating events and probable cause, and  
20 concealing video.

21       205. On April 17, 2009, OPA exonerated Letizia in an official ruling by policy maker  
22 Captain Thomas "Tag" Gleason, who said the conduct of Letizia "was appropriate and consistent  
23 with policies and practices of the" SPD.

1       206. The OPA exoneration further set the policy that arrest for not giving ID is  
2 allowed, and reinforcing the general policy to abuse citizens, even where OPA has video  
3 disproving the officer version of events.

4       207. In May 2009, OPA associate director and policy maker John Fowler wrote, in the  
5 May 2009 OPA Commendations and Complaints Report, that Rachner's arrest was lawful and  
6 proper and approved by the supervisor, again ratifying and setting policy officers may arrest for  
7 not giving identification and may abuse citizens.

8       208. Rachner wrote to OPA on July 15, 2009 asking "what policy, practice or custom  
9 of SPD permits officers to arrest a detainee who fails to accurately identify themselves?"

10       209. About July 2009 Captain Gleason responded that the SPD, OPA and the City  
11 Attorney office reviewed Rachner's complaint and the response of the officers was proper, for a  
12 third time ratifying and declaring in effect, the policy that officers may abuse citizens, arrest for  
13 not giving identification, and arrest for contempt of cop, even when the citizen complains and  
14 cites the relevant case law to OPA, tells OPA to look on the video, and the video supports the  
15 citizens' version of events, and disproves officer versions of events and shows the incident report  
16 is false.

17       210. The OPA whitewashed the officers' wrongdoing directed at plaintiffs and also  
18 apparent fabrications and concealment of evidence committed by these officers.

19       211. No one at OPA has been disciplined for this wrongful conduct. OPA misconduct  
20 is hidden by the general policy of concealing exoneration files.

21       212. The OPA also exonerated Dietrich for falsely arresting Currie and other  
22 misconduct even though as in Rachner's case, it had the videos showing false arrest and  
23 misconduct.

1       213. OPA exonerated Dietrich for another complaint made that he scared Currie with a  
2 threat of exposing him to a cell containing the spit of a prior detainee who had hepatitis, even  
3 after Dietrich admitted to OPA that he made the comment to “scare” Currie. OPA’s exoneration  
4 in this case further set the policy that officers may in general abuse citizens and OPA will  
5 whitewash it, relying on concealment of exoneration files and video.

6       214. Meanwhile, on May 7, 2009, Rachner again requested video of his arrest made by  
7 officer Letizia.

8       215. SPD responded by sending Rachner a letter on June 9, 2009 (mistakenly dated  
9 April 9, 2009) signed by acting chief John Diaz, a policy maker at SPD, who by policy or custom  
10 frequently allowed his name to be used to conceal video. The letter stated, falsely and  
11 incorrectly, that, “These recordings are both past our retention period [referring to the normal 90  
12 day retention period] and can no longer be obtained.”

13       216. This was false because in fact SPD had the Letizia video on its server. SPD also  
14 had copies given to Letizia and OPA.

15       217. The falsehood of the Diaz statement was easily discernible at SPD; the activity  
16 log for this video at SPD clearly showed the server had the video, and the copies were made for  
17 OPA and Letizia.

18       218. Attached hereto as Exhibit C are true and correct copies of the June 9, 2009  
19 (mistakenly dated April 9, 2009) letter from SPD mentioned above and also two other letters  
20 from SPD to Rachner, one dated June 30, 2009 and one dated January 25, 2010 which also have  
21 false statements that video related to Rachner’s arrest does not exist at SPD.

22       219. On information and belief, defendant officers conspired to suppress the videos  
23 and have the statements in Exhibit C issued to Rachner concealing videos.

1       220. On information and belief, public records officers did not look on the logs to see  
2 if there was Letizia video or in responding to Rachner's request, per the general policy that they  
3 relied on video officers to find video; nor did they ask the officer involved or OPA for any copies  
4 of video; and/or in this case on information and belief Letizia concealed his video from them.

5       221. Rachner in mid-2009 concluded there was no longer any video, and was  
6 concerned that SPD had not kept it and would be engaged in further wrongdoing in destroying or  
7 losing evidence, despite his specific request that the video evidence be preserved.

8       222. In late 2009 Rachner decided to find out who deleted video of his arrest and  
9 when. This led to his discovery of activity logs, the existence of which SPD had concealed from  
10 the public and defendants for years.

11       223. He researched the SPD system vendor and learned there are activity logs for each  
12 video containing things such as dates of creation, and dates of removal from the system.

13       224. In November 2009 he demanded activity logs for all video relevant to his  
14 incident.

15       225. On information and belief, this was the first time any citizen asked for logs.

16       226. On information and belief, this caused the SPD public records staff to look at the  
17 logs for the first time, to respond to Rachner's requests.

18       227. On January 25, 2010 SPD produced to Rachner the log for the Letizia video, and  
19 the Letizia video. SPD also told Rachner in writing that this was the only video related to his  
20 arrest, and that neither Clark nor Schoenberg made video. Such statements were not true,  
21 because there was video by Dietrich, Clark, Silva, and Archer if not Schoenberg. SPD also put  
22 on the Letizia video container, a notice saying "This copy was prepared by the Seattle Police  
23 Department and may not be revealed to any other individual and/or agency or used for any other

1 purpose that stated without the consent of the Seattle Police Department, " and on information  
2 and belief SPD commonly puts such notices on videos it releases, violating person's liberty and  
3 free speech rights as part of the general policy and custom to ensure videos are not used to  
4 remedy officer misconduct.

5 228. A copy of the activity log for the Letizia video that Rachner received in January  
6 2010 is included in Exhibit D hereto, discussed below.

7 229. On information and belief, even in January 2010 defendant officers or some of  
8 them conspired to keep videos concealed from Rachner by misinforming public records officers  
9 and/or by 2010 public records officers still had no proper way to search for video; the existence  
10 of the Dietrich, Clark, Silva, and Archer videos is apparent on the server activity logs and either  
11 public records officers were fooled into saying there was no video other than that by Letizia, or  
12 had no system to look at activity logs and took the officers' words at face value.

13 230. Rachner reviewed the Letizia video and learned there was a Dietrich video; he  
14 requested such video, and then on March 9, 2010, SPD gave him the Dietrich video and log. A  
15 copy of the log for the Dietrich video is included in Exhibit D discussed below.

16 231. SPD still concealed the other video from Rachner. Still unaware other video  
17 existed, being misled by SPD's statements, Rachner filed a public records suit in April 2010  
18 concerning the delays in producing the video that had been disclosed. This led to disclosure of  
19 more videos.

20 232. Hulton had requested all video related to his arrest in 2010 and in mid 2010 SPD  
21 sent him the Letizia, Dietrich, Silva and Clark videos, which Hulton shared with Rachner.

22 233. SPD never sent Rachner the Silva or Clark videos despite his longstanding request  
23 for all related videos.

1 234. Only after his public records suit was filed did SPD send Rachner logs for the  
2 Silva video and a Clark video, but still concealed from him the Archer video.

3 235. Exhibit D hereto contains true and correct copies of the logs for the Silva and  
4 Clark videos as well as the Letizia and Dietrich video logs that were sent to Rachner in 2010. On  
5 said logs, Rachner made handwritten notes as he learned what the information on the logs means.

6 236. These logs were extant and easily viewable on the SPD system since creation of  
7 the videos in October 2008 and had they been checked would have disproved the repeated  
8 assertions there was no video.

9 237. The logs in Exhibit D are typical of activity logs indicating badge numbers,  
10 creation dates, loss events, playback events, copying events, and other data including things such  
11 as "IIS" which means a copy was made for OPA.

12 238. The logs in Exhibit D correctly indicate the history or events concerning the video  
13 relevant to plaintiffs' arrests.

14 239. The logs in Exhibit D correctly indicate that SPD had video relevant to plaintiff's  
15 arrest when Diaz and others at SPD repeatedly told Rachner there was no longer any video or  
16 that the only video was the Letizia video. Either defendants and SPD fraudulently made those  
17 statements or SPD systemically allowed itself to make such incorrect statements by not giving  
18 public records officers access to the logs.

19 240. The logs in Exhibit D correctly show that various videos related to arrest of  
20 plaintiffs had been copied and replayed at SPD. The statements there was no video were  
21 fraudulent or SPD systemically had no process for checking with officers involved or OPA, in  
22 responding to requests for video.

1       241. The handwritten notes by Rachner in Exhibit D are true and correct descriptions  
2 of the events they describe.

3       242. The logs in Exhibit D were all easily discernible at SPD at all relevant times.

4       243. Rachner's experiences with getting video are not unique and there is a policy and  
5 custom at SPD to defeat requests for video in the same manner that Rachner's requests for video  
6 were defeated: those responding to requests did not have access to the logs. In general, SPD set  
7 up the system to conceal video, conceal logs, not look at logs, and does not even link video or  
8 otherwise properly respond to requests.

9       244. Rachner communicated with SPD about the logs he had received.

10       245. In June 2010, SPD legal advisor Shawna Skjonsberg-Fotopolous told Rachner,  
11 regarding a log sent to him, that it showed the corresponding video had been deleted from the  
12 system in December 2008 ("Video Log shows that video file was deleted from the server on 12-  
13 on 12-31-08 referring to a change from zero to two on the file for integrity status in the logs, and  
14 she thus confirmed this change from zero to two means there was a loss or deletion event.

15       246. At this time, SPD concealed and did not tell Rachner the loss event that took out  
16 those videos from the server was a massive loss of some 14,221 videos, something Rachner  
17 learned only in 2011 as discussed below.

18       247. In media write ups relating to Rachner's public records suit, SPD's Sean  
19 Whitcomb had falsely told Nalder in April 2010 that the Letizia tape had been temporarily lost  
20 from the system.

21       248. This was an attempt by an SPD policy maker to conceal the large loss of video  
22 event; to falsify evidence because in fact the Letizia video never was lost from the server; this  
23

1 was continued falsification of evidence or reflected defendants' ongoing misinformation and/or  
2 SPD practice of hiding former events of concealment of video.

3 249. Whitcomb also told Nalder that the lost data was eventually recovered.

4 250. This was false because the Letizia video had not been lost nor recovered.

5 251. The log for the Letizia video in Exhibit D correctly shows that the Letizia video  
6 was not lost in the loss event in December 2008, nor recovered, contrary to Whitcomb's official  
7 statements to Nalder. Either defendants deceived Whitcomb or there was no proper system at  
8 SPD for retrieval of video or responding to requests about video.

9 252. Whitcomb's statement was also false because the 14,221 videos lost from the  
10 server in December 2008 were not recovered; SPD desired to conceal the massive loss events  
11 and the fact they are recurrent and often times video is not recovered after such spoliation.

12 253. In November 2010, Rachner discussed with SPD Assistant Chief Dick Reed video  
13 concealment issues, and the loss event SPD had told him affected some of the video of his arrest.

14 254. Reed concealed from Rachner that the loss event involved 14,221 videos, and  
15 concealed that there was still an Archer video SPD had not given to Rachner, or Hulton, and that  
16 there were other loss events.

17 255. Rachner told Reed it was unlikely the only person to whom SPD had wrongfully  
18 denied video was himself, Rachner, that is, one with computer security skills able to go and learn  
19 about activity logs and request same; and that if he had been wrongfully denied video, likely  
20 others had been too. Rachner said if the reason for being denied video was some negligent loss  
21 event as claimed, then likely this happened to other people, too. Rachner told Reed that others  
22 could be wrongfully convicted or sitting in jail today, where they had asked for video and not  
23

1 gotten it the way Rachner had not gotten video. Rachner said SPD should come forward and  
2 audit itself for prior wrongful denials of video to find out such cases and do the right thing.

3 256. Rachner offered to help SPD do the audit, and gave Reed an 8 point method  
4 involving looking in paper files for requests for video that had been denied, then looking on  
5 activity logs to see if in fact there was video at the time (that is, following the method Rachner  
6 used to uncover concealment of video of his own arrest) by using the logs.

7 257. Rachner suggested it was easy to write a software application to check the data  
8 base of activity logs to assist in this audit.

9 258. Reed and SPD politely yet firmly declined those suggestions.

10 259. SPD on information and belief has not conducted any audit or publicized audit to  
11 find other cases of persons wrongfully denied video, or prior acts of concealment or spoliation of  
12 video evidence, even after Rachner's efforts told top leadership there had been massive loss  
13 events and ongoing concealment of logs.

14 260. This is because the general policy since 2001 and to date is to not let the video  
15 system or server be used to show misconduct, whether misconduct on the street, or misconduct  
16 by high SPD officials in operating the video system to hide concealment loss or video spoliation  
17 events.

18 261. In the meeting, Rachner told SPD he would conduct such audit himself, and he  
19 has taken steps to be able to do so in part despite SPD resistance and concealment that has  
20 continued into 2011.

21 262. Rachner in 2010, began requesting denials of request for video and related logs  
22 from SPD. SPD failed to give Rachner the records sought in timely manner, and indicated it  
23 would take years for Rachner to get the information needed in this way. This slow and partial

1 response was in furtherance of SPD policy to cover up the loss events and other concealment or  
2 spoliation of video evidence.

3 263. In February 2011, Rachner decided to deprive SPD of the ability to falsely claim  
4 it took a great deal of time to respond to partial requests, so in February 2011 he requested in  
5 essence, all activity logs for all videos on the SPD server.

6 264. In response, SPD delayed for months, falsely asserting that for technical reasons it  
7 could only respond in batches and it was not easy to respond.

8 265. Rachner forced SPD to respond more fully when he wrote SPD truthfully telling  
9 them the electronic nature of the data meant SPD could easily respond to his request, and  
10 indicated he would sue to get the log data.

11 266. SPD delivered some 714,659 logs about July 2011 (the data was still incomplete;  
12 it lacked time of day information useful to search for video).

13 267. The data only included three years of log entries, because SPD purges videos and  
14 log entries after three years.

15 268. The logs showed the specific sudden loss events mentioned above, by showing  
16 the change from zero to two in the integrity field, including for the loss of 14,221 logs in  
17 December 2008 and other loss events identified above. This was the first time Rachner realized  
18 the loss event SPD had claimed affected his video, actually involved 14,221 videos; SPD had  
19 never told him during his criminal trial it had lost some of the video related to his arrest.

20 269. On information and belief the disclosure of many logs to Rachner in July 2011  
21 was the first time SPD has been forced to reveal the magnitude of the video loss events  
22 mentioned in this complaint.

1 270. In the logs Rachner obtained in July 2011, there are some 65,690 videos extant  
2 on December 29, 2008.

3 271. The loss of 14,221 videos at the end of December 2008 was thus a loss of some  
4 22% of the video on the system at that time.

5 272. Attached hereto as Exhibit E is a true and correct print out of one page out of 59  
6 pages in a print-out listing the identifying numbers of the 14,221 videos lost in December 2008  
7 that are included in the data given to Rachner in 2011. The page included in Exhibit E is page 51  
8 of the entire print out and this page has the identifying numbers of the Clark, Archer and Dietrich  
9 videos: 7405@20081018200500, 6938@20081018201905, and 4901@20081018203109. In  
10 these identifying numbers the officer's badge number is the first four digits, followed by "@";  
11 followed by digits for the year, month, date and time the video was made. Exhibit E correctly  
12 indicates those videos were lost in that event. (Rachner only obtained the Clark and Dietrich  
13 videos because copies had been exported and Rachner still has not been given the Archer video  
14 by SPD.)

15 273. SPD continues to purge or delete log entries today. SPD deletes log entries after  
16 three years.

17 274. Every day SPD is deleting entries that would help shows acts of prior  
18 concealment of video, by showing that a video existed at the time a request for video was made,  
19 or during the time a criminal charge was pending and SPD failed to deliver video. Every day  
20 SPD deleting entries that would show it violated disclosure obligations, improperly responded to  
21 records requests or violated Brady obligations.

22 275. On information and belief, on or about January 1, 2012, the records of the loss  
23 event of December 2008 concerning some 14,221 videos will be purged from the SPD system;

1 and on other three year anniversaries of the loss events mentioned above, SPD will purge or  
2 delete evidence of such loss events.

3 276. The logs given to Rachner in July 2011 indicated to him for the first time there is  
4 an "Archer video" concerning his arrest.

5 277. SPD previously concealed from Rachner and Hulton the Archer video, repeatedly,  
6 and still is concealing said video from Rachner and Hulton.

7 278. The data Rachner obtained in July 2011 correctly shows SPD deletes log entries  
8 after three years.

9 279. There were 143 days between Rachner's request on February 21, 2011, and July  
10 14, 2011, when SPD copied the database for Rachner.

11 280. In said 143 day period SPD continued to delete videos, activity logs and log  
12 entries, thus actively deleting records Rachner had requested, while knowing of his efforts and  
13 plan to audit SPD for prior acts of concealment of video.

14 281. In this 143 day period, on information and belief, SPD deleted about 70,000  
15 activity logs before giving the data set to Rachner, including some 350,000 log entries, to  
16 conceal and hide SPD's prior concealments and nondisclosure of video and loss or other  
17 spoliation events.

18 282. This ongoing concealment and spoliation of video evidence is part of the ongoing  
19 policy and custom by SPD since 2001 to ensure video evidence is not used to show officer  
20 wrongdoing; to operate the video system to conceal wrongdoing; and to operate the system  
21 including through decisions at the highest level, to ensure that prior acts of concealment and  
22 nondisclosure of video evidence are not disclosed, and to destroy evidence of loss or spoliation  
23 of video evidence.

1 283. SPD on information and belief knows that certain civil claims expire after certain  
2 periods of time, including sometimes a three year statute of limitations. SPD delayed  
3 responding to Rachner's requests to let more information be deleted, trying to let statute of  
4 limitations barriers arise to prevent civil claims that might reveal officer misconduct.

5 284. Instead of self auditing, SPD has by high level policy, continued to conceal video  
6 and events of concealment, loss or spoliation of video evidence, and has continued to fail to  
7 disclose same and to destroy evidence, as part of the overall policy and custom since 2001 to use  
8 and operate the system to hide rather than reveal misconduct.

9 285. If Rachner had not obtained the logs he obtained in July 2011, SPD would have  
10 deleted more evidence.

11 286. After obtaining the logs, Rachner studied them. The logs given to Rachner show  
12 a policy at SPD to prevent video from reaching prosecutors.

13 287. The logs given to Rachner correctly show and it is true that on average, over the  
14 period covered in the data set, SPD exports 7 videos a day to city and county prosecutors.

15 288. SPD refers some 60 cases a day to city or county prosecutors. SPD has a policy  
16 and practice of concealing and withholding video from prosecutors, who commonly do not  
17 review video. By this policy and custom, SPD seeks to ensure SPD video is not used against  
18 officers; is not used to exonerate innocent defendants such as Rachner, Hulton and Currie, who  
19 challenge officer misconduct; and is not presented to attorneys who might use the video to  
20 believe such persons or to find there was officer misconduct.

21 289. SPD leaders have known of this very low rate at which attorneys are given video  
22 and has promoted a system in which non-uniformed persons such as attorneys, do not normally  
23 view video.

1       290. The logs given to Rachner in July 2011 show SPD had a policy to let many  
 2 officers not take video. The logs given to Rachner correctly show that as of August 2008 there  
 3 were some 422 officers who made video (that is, video from that many officers, remained in the  
 4 SPD system then was later given to Rachner). On information and belief, 422 officers was as of  
 5 August 2008 only some 70% or 80% of all street officers in patrol cars. SPD by policy and  
 6 custom allowed 20% or 30% of all officers in patrol cars to routinely not take video  
 7 implementing the policy that it was proper for officers to not make video, to defeat the purpose  
 8 of the system to show officer misconduct through video.

9       291. The logs given to Rachner show SPD fails to use video data to properly supervise.  
 10 The logs given to Rachner correctly show that in the three-year period included, there were  
 11 exports of some 999 videos to OPA. There are 841 officers who created video shown in the logs  
 12 given to Rachner. (Gradually this number increased from 2008 going forward). An export to  
 13 OPA occurs if a citizen complains to OPA and the OPA's initial screening does not indicate the  
 14 complaint is meritless. The 999 videos exported to OPA each show the officer (badge number)  
 15 who created the video, that is, who was involved in the situation leading to the complaint to  
 16 OPA.

17       292. The 999 videos shown in the logs have a lopsided distribution pattern: relatively  
 18 few officers are involved in most of the exports to OPA.

19       293. Half of all officers making video as shown in the logs, had no OPA exports; some  
 20 294 officers out of the 841 officers had 1-3 exports to OPA each, or a total of 472 exports; 88  
 21 officers had 4 to 18 video exports to OPA each; and one officer had 19 exports to OPA such that  
 22 these 89 officers with the most OPA video exports had a total of 527 exports to OPA.

23       294. These 89 officers accounted for 52.7% of all 999 videos exported to OPA.

1 295. 89 officers is 10.5% of 841 officers.

2 296. Roughly 11 percent of officers are shown in the logs, to be associated with half of  
3 all OPA complaints .

4 297. SPD leaders failed to properly use the video data to supervise, train or discipline  
5 officers who generate most complaints; SPD has not used the data to find or review videos, to  
6 ensure videos of such officers are disclosed and reviewed, nor has SPD focused supervision or  
7 training on this 10 percent of officers causing half the complaints to OPA.

8 298. SPD on information and belief, has failed to cross check or audit for video not  
9 disclosed, or incident reports not noting video, associated with the 89 officers generating the  
10 most OPA complaints.

11 299. SPD generally has not used the video system and log data at its disposal to  
12 properly supervise officers; the purpose of the system in practice is to conceal and not reveal or  
13 remedy misconduct.

14 300. On August 18, 2011 the Washington State Supreme Court ruled that police  
15 discipline files leading to exoneration of an officer may not be concealed from persons  
16 requesting same on a blanket basis but on information and belief, since this ruling, SPD has  
17 generally continued to deny to Rachner, the media and others the OPA exoneration files  
18 requested previously.

19 301. Rachner also worked to monitor SPD officer compliance with video regulations  
20 after his criminal case was terminated; in 2009, Rachner had obtained all of the SPD's 229  
21 incident reports for all obstruction arrests in the period October 2007 to January 2008 and  
22 analyzed them; and this is the source of information for the allegations above that video is not  
23 noted in some 83% of obstruction arrests in this period.

1       302. SPD officers have continued to resist proper use of the video system since 2001  
2 and to the present. SPD leaders know this and have operated the system so that it does not show  
3 officer misconduct.

4       303. Recently, in September 2011, SPD officers complained about changes in a prior  
5 policy, under which captains were not allowed to review videos concerning the subordinate  
6 officers in their charge. This prior policy prevented video from being used to monitor and  
7 supervise officers. SPD leaders know of this ongoing resistance to review of videos, and at all  
8 times knew officers were resistant to using video to show their misconduct, and SPD leaders  
9 ignored this and nonetheless implemented the video system so that it would hide and conceal  
10 misconduct rather than reveal it.

11       304. In September 2011 Sean Whitcomb told KOMO TV that SPD often does not  
12 disclose videos about third party citizens because the rules concerning same are “complex” and  
13 involve “labor law.” In fact, the vast majority of video involving a third party involves incidents  
14 in public and in on-street encounters, do not involve salacious facts or some kind of confidential  
15 informant or other information the disclosure of which would not raise privacy issues nor harm  
16 or threaten investigations or law enforcement; and labor law does not mandate anything that SPD  
17 did not agree to by its choice.

18 **LEGAL CLAIMS**

19       **False Arrest**

20       305. Plaintiffs restate and incorporate in this section all other allegations in this  
21 complaint.

1       306. Letizia, Dietrich and Schoenberg lacked proper basis or probable cause for stopping,  
2 seizing, searching and arresting Rachner and Hulton and are individually liable for false arrest to  
3 plaintiffs.

4       307. There was no probable cause or basis to stop and seize or arrest the group through  
5 show of force, nor was there probable cause to believe a crime had been committed by Rachner  
6 and no basis to search him lawfully, as the refusal to give identification was lawful; nor was  
7 there probable cause to arrest Hulton for assault.

8       308. There was no reasonably objective basis for the defendant officers' actions.

9       309. Said officers intentionally and maliciously falsely arrested plaintiffs to suppress  
10 their speech and expressive conduct and violate what officers knew to be their clearly established  
11 rights of assembly, liberty, speech, expression, the right to be free of unlawful search and seizure  
12 and the right to silence and to not give identification.

13       310. The false arrests caused and proximately caused plaintiffs to suffer insult,  
14 indignity, humiliation, embarrassment and emotional distress; economic loss; minor physical  
15 pain and suffering; and they are entitled to recover from individual defendants for all such losses  
16 and injuries in an amount to be shown at trial.

17       311. The individual defendants agreed to carry out said illegal acts and each  
18 participated in such agreement, helped carry it out through the aforesaid acts and comments and  
19 failures to stop the unlawful acts, and through fabricating evidence as aforesaid, and each thus  
20 conspired to violate rights and fabricate evidence and each is jointly and severally liable to each  
21 plaintiff for any liability of the others, under acting in concert and conspiracy theories of  
22 liability.

1       312. By acting maliciously and intentionally, said individual defendants are liable for  
2 emotional distress damages.

3       313. The City of Seattle is vicariously liable for said unlawful seizure and search and  
4 false arrest liability and conspiracy liability because at all relevant times the City employed  
5 Letizia, Dietrich and Schoenberg who were acting in furtherance of City business and within the  
6 scope of employment when the said tortious acts occurred.

7       **Malicious Prosecution**

8       314. Plaintiffs restate and incorporate in this section all other allegations in this  
9 complaint.

10       315. Letizia, Dietrich and Schoenberg are liable to plaintiffs for malicious prosecution  
11 of plaintiffs; they caused criminal proceedings to be initiated or continued against plaintiffs  
12 without probable cause; with malice; and said proceedings terminated in favor of plaintiffs or  
13 were abandoned when the City dismissed charges in 2009; and said prosecutions caused  
14 plaintiffs to suffer injury or damages.

15       316. Plaintiffs are entitled to recover from Letizia, Dietrich and Schoenberg all such  
16 damages, including general damages, economic loss and mental and emotional distress.

17       317. The individual defendants acted in concert and conspired to effect and procure  
18 said malicious prosecutions including through fabricated evidence and concealment of facts with  
19 each agreeing thereto and taking acts in furtherance thereof as aforesaid, including but not  
20 limited to coordinating fabrication of evidence and agreeing to not reveal that the incident report  
21 contained falsehoods; and each is jointly and severally liable based on acting in concert and  
22 conspiracy theories of liability.

1       318. The City of Seattle is vicariously liable to plaintiffs for malicious prosecution,  
2 because at all relevant times the City employed individual defendants and prosecutors who were  
3 acting in furtherance of City business and within the scope of employment when the said tortious  
4 acts occurred.

5       319. The City is also liable for malicious prosecution as it maliciously prosecuted  
6 plaintiffs and is not immune.

7       320. City prosecutors are not being sued for this tort due to their legal immunity;  
8 should facts develop showing they acted outside the prosecutor role plaintiffs reserve the right to  
9 add them as defendants.

10      **Intentional Infliction of Emotional Distress**

11      321. Plaintiffs restate and incorporate in this section all other allegations in this  
12 complaint.

13      322. Plaintiffs may recover against Letizia, Dietrich and Schoenberg for the tort of  
14 intentional infliction of emotional distress.

15      323. Said defendants engaged in extreme and outrageous conduct in falsely arresting  
16 Rachner for speaking up about his rights lawfully and prosecuting him for filing an OPA  
17 complaint; and for joining in his arrest and not stopping it when the stated basis was he was  
18 acting “edjumicated” and like a “Brainiac” when this merely meant he correctly told Letizia the  
19 law; they acted with extreme and outrageous conduct including false arresting Hulton without  
20 having any identification of him and when the identification given did not match him; and by  
21 fabricating and concealing evidence as aforesaid and jointly agreeing to back each other up in  
22 any OPA or other investigation including not disclosing that the statements on the incident report  
23 were false or that there was video.

1 324. Plaintiffs suffered severe emotional distress as a direct result of this wrongdoing.

2 325. The individual defendants are liable for such damages.

3 326. Each jointly agreed to commit the tort of outrageous infliction of emotional  
4 distress and violate plaintiffs rights, and fabricate evidence, and conceal video, to allow the  
5 others to do so without telling, and each acted in furtherance of said agreement and each is  
6 jointly and severally liable to each plaintiff based on conspiracy and acting in concert theories.

7 327. Their actions were outrageous projections of raw police power to abuse citizens  
8 with impunity, knowing the video and OPA systems would let them do so, simply because  
9 Rachner was educated and spoke up or Hulton was part of Urban Golf that officers disliked in  
10 part for its expressive conduct.

11 328. The actions of defendants were extreme as they involved fabrication and  
12 concealment of evidence, which is a crime.

13 329. Their acts to back up the order that Urban Golfers could not come back to Capitol  
14 Hill also were extreme and outrageous.

15 330. Because this was intentional, plaintiffs may recover for emotional distress.

16 331. As result of this extreme and outrageous conduct, plaintiffs suffered insult,  
17 indignity, and economic and emotional distress damages and may recover same from the  
18 individual defendants.

19 332. The City of Seattle is vicariously liable to plaintiffs for said misconduct for  
20 intentional infliction of emotional distress, because at all relevant times the City employed  
21 individual defendants who are liable and they were acting in furtherance of City business and  
22 within the scope of employment when the said tortious acts occurred.

23 **Federal Civil Rights Claims – Compensatory and Punitive Damages**

1       333. Plaintiffs restate and incorporate in this section all other allegations in this  
2 complaint.

3       334. 42 USC §1983 provides that one may recover from any person or entity acting  
4 under color of state law who causes damages through violations of rights under the federal  
5 constitution and federal laws.

6       335. At relevant times, individual defendants acted under color of law and in uniform.

7       336. Letizia, Dietrich and Schoenberg violated the following federal rights of  
8 plaintiffs: (a) the right Rachner had to free speech and protest in speaking up to Letizia, in filing  
9 the OPA complaint, and in his expressive conduct, under the First Amendment; (b) the right  
10 Hulton had to free speech in his expressive conduct and his protesting his arrest; (c) the right to  
11 assemble as Urban Golfers under the First Amendment and the substantive right to due process  
12 liberty in the Fourteenth Amendment; including the right to walk about Capitol Hill and be free  
13 of malicious prosecution; (d) the Fourth Amendment rights of Rachner and Hulton to be free of  
14 unreasonable or unlawful searches and seizures or stops, including illegal assaults on them when  
15 arrested and seized, their battery, false arrest and malicious prosecution; (e) the Fifth  
16 Amendment rights of Rachner and Hulton to remain silent, violated when Rachner was arrested  
17 for failure to give identification and when Hulton was arrested for not confessing; (f) violation of  
18 plaintiffs' Fourteenth Amendment due process rights and Sixth amendment rights to confront  
19 witnesses in that defendants and the City allowed loss or destruction or nondisclosure of video  
20 and related information and violated plaintiff's *Brady* rights.

21       337. Said violations were intentional, malicious, motivated by ill will and spite,  
22 including spite at Rachner for being "edjumicated" or a "Brainiac"; individual defendants have  
23

1 contempt for citizens who speak up to cops or stand on their rights and said contempt is  
2 malicious and oppressive.

3 338. Letizia later told city attorneys Rachner was an “asshole.” Letizia had malice  
4 toward Rachner and all officers had malice to the group.

5 339. As a direct result of these violations, plaintiffs suffered damages, injury and loss,  
6 including insult, harm to reputation, indignity, defense costs, emotional distress, anxiety, and  
7 economic loss; Rachner suffered the loss of over \$100,000 when one client of his learned of his  
8 arrest and did not hire him as a computer security expert due to the defendants’ misconduct.

9 340. Said individual defendants are liable to plaintiffs in an amount to be proven at  
10 trial including for compensatory and punitive damages, and attorneys fees and costs of suit.

11 341. Each such defendant agreed to the illegal acts and conspired to violate the civil  
12 rights of plaintiffs and took action in furtherance of such agreement or acted in concert to do so  
13 including backing each other up and coordinating the fabrication of evidence and making false  
14 statements on the incident report; each is jointly and severally liable to plaintiffs for conspiracy  
15 to violate civil rights.

16 342. The city of Seattle is liable under 42 USC § 1983 because the violations of civil  
17 rights by individual defendants were caused by, facilitated by, promoted or allowed knowingly  
18 or recklessly through official policy and custom, as detailed throughout this complaint and  
19 existing from 2001 forward to October 2008 and as shown by later acts of ongoing concealment  
20 of video evidence related to this incident to the present day; including but not limited to policy  
21 and custom to have and allow abuse of citizens, excessive force, arrests for not giving  
22 identification, improper training and supervision; policy and custom to not disclose video or  
23 OPA findings as aforesaid throughout this complaint, to make false statements about video, to

1 conceal video, to conceal activity logs and to hide and conceal activity logs and events of  
2 concealment, loss or spoliation of video evidence even in the face of repeated requests for video.

3 343. The City is liable for these civil rights violations because SPD policy or custom  
4 caused the wrongdoing in violation of section 1983; SPD policymakers knowingly or recklessly  
5 allowed the video and OPA systems to be operated so as to not reveal misconduct, contrary to  
6 the direct promises to the public the video would help assure officer integrity.

7 344. SPD leaders also knowingly engaged in many of the policies and customs  
8 mentioned herein including concealment of large video loss events, concealment of logs, and the  
9 decision to not audit SPD.

10 345. SPD leaders acted intentionally or recklessly ignored facts with callous disregard  
11 to the risk that officers would resist disclosure of wrongdoing, and would operate the video and  
12 OPA systems to conceal officer misconduct rather than reveal it.

13 346. Such municipal acts and omissions caused the violations asserted herein.

14 347. The City is thus liable to plaintiffs under section 1983 for all compensatory  
15 damages, attorneys fees and costs that shall be proven at trial.

16 **Civil Rights Injunctive Relief**

17 348. Plaintiffs face an ongoing threat of similar violations in encounters with officers  
18 and an express threat that Urban Golf is not allowed.

19 349. Since October 2008 Urban Golf has ceased to operate due to SPD intimidation  
20 and conduct as alleged above; including false arrests and prosecutions of three members of  
21 Urban Golf on trumped up charges.

22 350. Because of such ongoing threats and harms, plaintiffs are entitled to the injunctive  
23 relief sought.

1 **DEMAND FOR JURY TRIAL; PLAUSIBILITY OF ALLEGATIONS**

2 351. Plaintiffs demand trial by jury of all facts and issues that may be resolved by jury;  
3 If this case is removed to federal court, this demand is intended to be a federal jury trial demand.

4 352. Plaintiffs provide detailed allegations to meet recent standards for “plausibility”  
5 of complaints in section 1983 cases that altered the prior “notice pleading” standard. Plaintiffs  
6 reserve the right to amend to add further detail as they gain more logs, videos, information,  
7 exoneration files, obstruction reports or other data that may enhance plausibility.

8 **PRAYER FOR RELIEF**

9 WHEREFORE plaintiffs pray for an order and judgment:

10 1. Declaring specifically that defendants violated their rights and committed the torts  
11 and violations alleged; violated SPD regulations, acted intentionally; fabricated and concealed  
12 evidence; finding specifically that individual defendants knew of and failed to stop the violations  
13 asserted herein, and acted with malice, and acted in a concert of action and conspiracy;

14 2. Awarding plaintiffs amounts for compensatory and punitive damages to be  
15 determined at trial, and also attorneys fees and costs as allowed by law; and

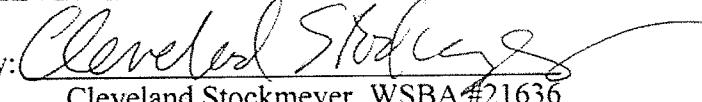
16 3. Permanent injunctive relief directing the City to act to remove the criminal  
17 charges on file against plaintiffs or place in said files statements that such charges lacked any  
18 basis and were maliciously and improperly brought; directing SPD to properly operate the video  
19 and OPA systems, including measures to ensure video and logs are recorded, kept, and disclosed  
20 properly and not purged, concealed, lost or spoliated; an order directing SPD to make activity log  
21 information publicly available on line; an order directing SPD to cease arresting citizens for  
22 refusal to give identification and to cease conduct abusing citizen rights, including the illegal  
23 order to Urban Golf to cease operating; an order to SPD to properly train officers including

1 expanding the manual sections on stops and arrests; an order that video must be reviewed before  
2 officer versions of events are evaluated; an order that any exemptions must be used with  
3 particularity; an order that SPD must treat failure to take video without due excuse, as a serious  
4 offense leading in most cases to dismissal and or as giving rise to a presumption that the video  
5 would show the officer version of events is false; and

6 4. Awarding such other and further relief as may be just and equitable.

7 DATED this 5th day of October, 2011.

8 CLEVELAND STOCKMEYER PLLC

9 By:   
10 Cleveland Stockmeyer, WSBA #21636

11 8056 Sunnyside Ave. N.  
12 Seattle, Washington 98103  
(206) 419-4385

13 Attorney for Plaintiffs Eric Rachner and David Hulton

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COMPLAINT FOR FALSE ARREST, MALICIOUS PROS.,  
CIVIL RIGHTS & SPOILATION OF VIDEO EVIDENCE - 58

CLEVELAND STOCKMEYER PLLC  
8056 Sunnyside Ave. N.  
Seattle WA 98103  
(206) 419-4385

# **Exhibit A**



# **Exhibit B**

**SEATTLE POLICE DEPARTMENT  
GENERAL OFFENSE HARDCOPY (ORIGINAL RELEASE)  
SEATTLE LAW DEPT COPY**

1313 - 0 ASSLT-NONAGG

GO 2008-392375 (OPEN)

Related text page(s)

Document: NARRATIVE

Author: 6628 - LETIZIA, MICHELE G

Related date/time: Oct-18-2008 2158

VICTIM INJURIES: None visible. V/Clark complained of pain to the side of his face. -->

INCIDENTAL PROPERTY DAMAGE: N/A -->

SCENE PROCESSING: N/A -->

STATEMENTS TAKEN: N/A -->

NARRATIVE:  
\*\*\*\*\*CHARGE OF ASSAULT (SMC 12A.06.010) IS REQUESTED AGAINST S/HULTON\*\*\*\*\*  
\*\*\*\*\*CHARGES OF OBSTRUCTING A PUBLIC OFFICER (SMC 12A.16.010) ARE REQUESTED  
AGAINST S/RACHNER AND S/CURRIE\*\*\*\*\*

On 10-18-2008 at about 1956 hrs while working uniformed patrol as 3E1 in the City of Seattle, I responded to the 1500 BLK# of Boylston Ave to investigate a report of someone being hit in the head with a golf ball. When I arrived, I found no golfers in the area. I did find a square (about four square feet) of artificial turf taped to the sidewalk on the East side of Boylston Ave, about 20 feet North of E Pike St. V/Clark met me at Boylston Ave/E Pike St and stated the following:

Boylston Ave/E Pike St and stated the following: Clark was walking in the 1500 BLK# of Boylston Ave, near E Pike St. Near the NorthEast corner of Boylston Ave/E Pike St, Clark could see several people standing around. At about the time that Clark realized that the group either were dressed like golfers or were carrying golf clubs, one person in the group (later identified as S/Hulton) suddenly swung a golf club, striking a ball. Clark was struck in the face with the ball struck by Hulton. The ball that struck Clark was a high-density foam ball roughly the size of a traditional golf ball. Clark stated that the impact caused pain to his face. Clark then stopped and made eye contact with Hulton and the group of golfers. Hulton and the other golfers acknowledged Clark. Then several of the golfers, including Hulton, began laughing at Clark and "...heckled..." him. Clark then called 9-1-1.

While officers were talking with Clark, a large group of people dressed in golfing attire and carrying golf clubs passed us and began walking towards the turf at Boylston Ave/E Pike St. Officers contacted this group of people, explained that we were conducting an investigation of an assault, and asked for identification from the group.

S/Rachner was part of this group. Rachner appeared to be intoxicated (for example, despite at least three commands from me to keep his hands out of his pockets, Rachner repeatedly placed his hands or fingers in his pockets). When I asked Rachner if he had I.D., Rachner answered "Yes". When I asked Rachner to give me his I.D., Rachner stated that his I.D. was in his wallet in his rear left pants pocket. Believing that Rachner was asking for permission to get his wallet (a common occurrence with intoxicated persons), I directed Rachner to "...go ahead and remove your I.D....". Rachner refused. Rachner told me that if I wanted his I.D., I would have to get it myself. I then removed Rachner's wallet from his

**SEATTLE POLICE DEPARTMENT  
GENERAL OFFENSE HARDCOPY (ORIGINAL RELEASE)  
SEATTLE LAW DEPT COPY**

1313 - 0 ASSLT-NONAGG

**GO 2008-392375 (OPEN)**

pocket and attempted to hand it to him. Rachner refused to accept his wallet. I explained to Rachner that I was not comfortable going through his wallet, that I suspected that he would accuse me of stealing something from his wallet if I opened it. I explained to Rachner again that he needed to remove his I.D. for me. Rachner again refused to accept his wallet. Next, I placed Rachner's wallet in his left jacket pocket, again explained that I was not going to open his wallet, and again requested his I.D.. Rachner again refused. Finally, I explained to Rachner that if he refused to provide his I.D., he would be arrested for Obstructing. I again requested Rachner's I.D.. Rachner again refused to provide his I.D.. I then arrested Rachner for Obstructing.

While officers were collecting I.D. cards from the initial group, a smaller group of people similarly dressed or carrying golf clubs walked to our location. Since officers had not yet identified if they had the suspect, officer(s) (including Sgt Dietrich) called out to this group and asked them to walk over. Most of the people in this group complied. S/Currie did not. Instead, Currie turned around and began walking away. Sgt Dietrich again called out to Currie. Currie again ignored the command and continued walking away. Sgt Dietrich was even more specific and said to Currie "You, the golfer in the green sweater, come here." Currie was in fact wearing a green sweater and continued to ignore Sgt Dietrich's command. At some point, Currie even turned around and made eye contact with Sgt Dietrich. When Sgt Dietrich made eye contact with Currie, Sgt Dietrich pointed at Currie and motioned with his fingers/hand for Currie to walk to him (Sgt Dietrich) while at the same time telling Currie, "Come here now or I will be forced to arrest you." Currie then turned around, continued walking away from Sgt Dietrich, and left the immediate area. A short time later, Currie returned to the corner. Sgt Dietrich recognized Currie from the previous encounter and stopped him. Sgt. Dietrich told Currie that his conduct amounted to obstructing, and asked for his identification. Currie refused, saying he did not know why he needed to. Sgt. Dietrich told Currie that he could either identify himself at the scene or in the precinct. Currie still refused to identify himself, so Sgt. Dietrich arrested Currie for Obstructing.

After officers had collected I.D. cards from the group, Clark responded to our location. Clark positively identified Hulton within the group as the golfer who had actually swung the golf club and struck him in the face with the ball. Hulton was arrested for Assault.

All three suspects were transported to the precinct. There, the suspects' identities were verified. Eventually, all three suspects were I&R'ed. Before leaving the precinct, officers explained to the suspects that charges would be requested through the Prosecuting Attorney's office, and that that office would be contacting them regarding this. All three suspects stated that they understood.

Sgt Dietrich screened this incident.

Sgt Kuerschner screened the part of the incident involving Currie. -->

I hereby declare (certify) under penalty of perjury under the laws of the State of Washington that this report is true and correct to the best of my knowledge and belief (RCW 9A.72.085)

# **Exhibit C**



# City of Seattle

## Seattle Police Department

R. Gil Kerlikowske, Chief of Police

April 9, 2009

← Typo—letter was actually  
written in June 2009

Eric Rachner  
1414 12<sup>th</sup> Avenue #319  
Seattle, WA 98122

Records Request under Chapter 42.56 RCW: SPD #08-392375

Dear Mr. Rachner,

This letter is in response to your request for the following:

*Any and all recordings produced by the officer-worn recording device of Michelle Letizia (#6628) as well as 911 call recordings*

These recordings are both past our retention period and can no longer be obtained. Please note that the majority of 911 calls and videos are retained for a period of ninety (90) days.

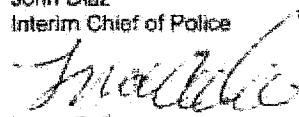
If you believe that the information furnished has been incorrectly withheld or redacted, you may file a written appeal with the Chief of Police within ten (10) business days from receipt of this letter. The appeal must include your name and address, a copy of the redacted document and a copy of this letter together with a brief statement identifying the basis of the appeal. Please mail or deliver your appeal to:

Chief of Police  
610 Fifth Avenue  
PO Box 34986  
Seattle, WA 98124-4986

If you have any questions regarding this response, please call the Public Disclosure Desk at (206) 684-5481.

Sincerely,

John Diaz  
Interim Chief of Police

  
Tricia Colin

Administrative Specialist III  
Public Request Unit

JD:tc



Seattle Police Department, 610 Fifth Avenue, PO Box 34986, Seattle, WA 98124-4986

An equal employment opportunity, affirmative action employer.

Accommodations for people with disabilities provided upon request. Call (206) 233-7203 at least two weeks in advance.



# City of Seattle

Seattle Police Department  
R. Gil Kerlikowske, Chief of Police

June 30, 2009

Eric Rachner  
1414 12<sup>th</sup> Avenue #319  
Seattle, WA 98122

Re: Records Request Appeal SPD #08-392375

Dear Mr. Rachner:

The Seattle Police Department Legal Unit has received your public disclosure appeal for recordings related to the investigation of SPD #08-392375.

Please see the enclosed copies of your December 23, 2008 and May 7, 2009 requests. Pursuant to RCW 42.56.080, SPD is required to respond with *identifiable* records.

Your first request did not identify 911 recordings or recording devices of Michelle Letizia or investigative records. SPD's retention schedule for recordings is 90 days. The recordings were not preserved in response to your initial request.

We suggest requesting a copy of Seattle Municipal Court's records in the criminal case number 530435. Recordings may have been preserved as part of the prosecutor's file.

If you have any questions, please call the Legal Unit at (206) 233-5141.

Sincerely,

John Diaz  
Interim Chief of Police

Shawna Skjonsberg-Fotopoulos  
Legal Advisor

JD: rlc

Enclosure



Seattle Police Department, 610 Fifth Avenue, PO Box 34986, Seattle, WA 98124-4986

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# City of Seattle

Gregory J. Nickels, Mayor

## Seattle Police Department

R. Gil Kerlikowske, Chief of Police

January 25, 2010

Eric Rachner  
1414 12<sup>th</sup> Avenue #319  
Seattle, WA 98122

Records Request under Chapter 42.56 RCW: SPD In-car video and Activity log

Dear Mr. Rachner,

Enclosed is a copy of the Seattle Police Department (SPD) records you requested.

A search of SPD files resulted in an in-car video for Officer Letizia only. Our search resulted in no in-car videos found for Officer Clark or Officer Shoenberg. In addition, no officer worn audio was found related to this incident.

As you requested, we have also enclosed the Activity Log regarding Officer Letizia's in-car video.

We apologize for the delay in being able to provide you with the materials requested. We have waived our normal fee for in-car videos.

If you believe that the information furnished has been incorrectly withheld or redacted, you may file a written appeal with the Chief of Police within ten (10) business days from the date of receipt. Please include your name and address, a copy of the redacted document and a copy of this letter together with a brief statement identifying the basis of the appeal. Please mail or deliver your appeal to:

Chief of Police  
610 Fifth Avenue  
P.O. Box 34986  
Seattle, WA 98124-4986

If you have any further questions please call the Public Disclosure Desk at (206) 684-5481.

Sincerely,

John Diaz  
Interim Chief of Police

A handwritten signature of Elizabeth J. Mash.

Elizabeth J. Mash  
Administrative Specialist III  
Public Request Unit

J.D:em



Seattle Police Department, 610 Fifth Avenue, PO Box 34986, Seattle, WA 98124-4986

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Accommodations for people with disabilities provided upon request. Call (206) 233-7203 at least two weeks in advance.

# **Exhibit D**

Log Type	Event	User	Log
12/10/2009 08:46:32 AM	Playback	4237	ISRVDCP) Playback video
12/10/2009 08:38:46 AM	Playback	7063	ISRVDCP) Playback video
04/23/2009 08:37:12 AM	Integrity Check	7065	ISRVDCP) Integrity changing video content from '11567418874141 video...
01/19/2010 08:41:12 PM	Playback	System	
12/31/2008 12:45:49 PM	Playback	6028	ISRVDCP) Playback video
11/04/2008 11:46:29 AM	Playback	4292	ISRVDCP) Playback video
11/04/2008 11:38:33 AM	Export	7055	ISRVDCP) Playback video
11/04/2008 08:28:45 AM	Export	7165	ISRVDCP) Playback video
11/04/2008 08:20:05 AM	Playback	7065	ISRVDCP) Playback video
11/02/2008 08:30:10 PM	Playback	6828	ISRVDCP) Playback video
11/02/2008 08:32:51 PM	Retain	6828	ISRVDCP) Playback video
10/24/2009 11:38:43 PM	Playback	System	
10/20/2008 12:14:38 PM	MoveFile Alouds on Read	System	
10/20/2008 12:14:17 PM	Retain	620	ISRVDCP) Playback video
10/20/2008 12:14:17 PM	Upload		

*Log 1*

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<input type="checkbox"/> Date Range	<input type="checkbox"/> From	<input type="checkbox"/> To	<input type="checkbox"/> Log ID
<input type="checkbox"/> Event Type	<input type="checkbox"/> Search		
<input type="checkbox"/> User ID	<input type="checkbox"/> Advanced Search		
Log Time	Event	User	Log
12/31/2008 12:21:01 AM	Integrity Check	System	Integrity - changing status from 0 to 2
11/04/2008 09:28:45 AM	Export	7065	<input type="checkbox"/> OPA
10/23/2008 11:34:45 PM	UnRetain	System	Copy Created
10/19/2008 04:18:45 AM	Moved Around on Raid	System	<input type="checkbox"/> UnRetain
10/19/2008 04:17:47 AM	Retain	System	Move from E:\lipvideos\7405\2008\01\8200500.mpg to K:\videofiles\7405\
10/19/2008 04:17:47 AM	Upload	7405	<input type="checkbox"/> Retain by event definition
			<input type="checkbox"/> Upload from network

Badge #7405 is  
Emily Clark

**Note: Only the first 1000 records will be shown.**

Print Detail Reports     Print     Print Preview     Exit



# **Exhibit E**

## Eric Rachner v. SPD, Complaint, Exhibit E, page 51 out of a 58 page list of Videos Lost from SPD 12/2008

4047@20081018040639,	7078@20081018131536,	6090@20081018193049,	6899@20081018221357,
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6889@20081018100746,	5011@20081018173210,	6938@20081018204006,	3564@20081018235432,
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6962@20081018113544,	5514@20081018175821,	6294@20081018205018,	6827@20081019000226,
6941@20081018114448,	5571@20081018180626,	6963@20081018205137,	6833@20081019000239,
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6992@20081018120623,	6742@20081018180910,	6742@20081018210948,	6193@20081019000855,
5571@20081018121031,	6750@20081018181849,	7423@20081018211551,	7434@20081019001039,
5571@20081018121412,	6610@20081018182120,	3564@20081018213253,	6370@20081019001251,
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5738@20081018122247,	5571@20081018182848,	6294@20081018214623,	7461@20081019002353,
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6992@20081018123100,	5118@20081018184831,	6751@20081018220035,	6973@20081019002636,
5571@20081018125400,	6941@20081018184908,	6971@20081018220416,	6833@20081019003450,
6962@20081018125412,	6610@20081018185234,	7434@20081018220742,	7465@20081019004713,
6941@20081018130049,	6750@20081018192235,	6971@20081018221048,	6715@20081019005649,
7447@20081018130742,	6628@20081018192743,	6833@20081018221049,	7461@20081019010357,

Key: in the format bbbb@yyyyymmddhhmmss, <bbbb> means the officer badge number, and <yyyyymmddhhmmss> means the year, month, day, and time when the recording started

## EXHIBIT 2

RECEIVED

11 OCT -7 AM 11:14

CITY OF SEATTLE  
MAYOR'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

Rachner	Plaintiff(s)	NO. 11-2-34597-1 SEA
vs		Order Setting Civil Case Schedule (*ORSCS)
Seattle Police Department		ASSIGNED JUDGE <u>Heller</u> 52
	Defendant(s)	FILE DATE: 10/05/2011
		TRIAL DATE: 03/25/2013

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

*"I understand that I am required to give a copy of these documents to all parties in this case."*

---

Print Name

Sign Name

## I. NOTICES (continued)

### **NOTICE TO ALL PARTIES:**

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

### **CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:**

A filing fee of \$230 must be paid when any answer that includes additional claims is filed in an existing case.

### **KCLCR 4.2(a)(2)**

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

### **PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:**

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

**If you miss your scheduled Trial Date**, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### **NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:**

*All parties to this action must keep the court informed of their addresses.* When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### **ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:**

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### **NOTICE OF NON-COMPLIANCE FEES:**

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

**King County Local Rules are available for viewing at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).**

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Wed 10/05/2011	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. <b>\$220 arbitration fee must be paid</b>	Wed 03/14/2012	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Wed 03/14/2012	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)]	Wed 03/28/2012	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 10/22/2012	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Mon 12/03/2012	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 12/17/2012	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(e)(2)].	Mon 12/17/2012	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 02/04/2013	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	Mon 02/25/2013	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 03/04/2013	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(2)].	Mon 03/04/2013	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 03/11/2013	
Joint Statement of Evidence [See KCLCR (4)(k)].	Mon 03/18/2013	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Mon 03/18/2013	*
Trial Date [See KCLCR 40].	Mon 03/25/2013	

## III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 10/05/2011


PRESIDING JUDGE

#### **IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

##### **READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE**

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**APPLICABLE RULES:** Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx> .

##### **CASE SCHEDULE AND REQUIREMENTS**

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

##### **THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.**

###### **A. Joint Confirmation regarding Trial Readiness Report:**

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx> . If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

###### **B. Settlement/Mediation/ADR**

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

**C. Trial:** Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

#### **MOTIONS PROCEDURES**

##### **A. Noting of Motions**

**Dispositive Motions:** All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx> .

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Motions in Family Law Cases not involving children:** Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Emergency Motions:** Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

## **B. Original Documents/Working Copies/ Filing of Documents**

**All original documents must be filed with the Clerk's Office.** Please see information on the Clerk's Office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

**Service of documents.** E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding E-Service.

**Original Proposed Order:** Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

**Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.**

**C. Form**

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

**IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.**



---

PRESIDING JUDGE

## EXHIBIT 3

RECEIVED  
11 OCT -7 AM 11:14  
CITY OF SEATTLE  
MAYOR'S OFFICE

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

Rachner	NO. 11-2-34597-1 SEA
VS	CASE INFORMATION COVER SHEET
Seattle Police Department	AND AREA DESIGNATION

CAUSE OF ACTION

(TTO) - TORT, NON-MOTOR VEHICLE

AREA DESIGNATION

**SEATTLE** - Defined as all King County north of Interstate 90 and including all of Interstate 90 right of way, all of the cities of Seattle, Mercer Island, Issaquah, and North Bend, and all of Vashon and Maury Islands.

## EXHIBIT 4

1 RECEIVED  
2  
3  
4

11 OCT -7 AM 11:14

5 CITY OF SEATTLE  
6 MAYOR'S OFFICE  
7  
8

9 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
10 FOR KING COUNTY  
11  
12

13 ERIC RACHNER, an individual, and  
14 DAVID HULTON, an individual,  
15

16 Plaintiffs,

17 No. 11-2-34597-1 SEA

18 SUMMONS

19 vs.

20 SEATTLE POLICE DEPARTMENT and  
21 CITY OF SEATTLE, a Washington  
22 municipal corporation; MICHELE LETIZIA  
23 and JANE DOE LETIZIA and the marital  
community composed thereof; BRETT  
SCHOENBERG and JANE DOE  
SCHOENBERG, and the marital community  
composed thereof; and SETH DIETRICH  
and JANE DOE DIETRICH and the marital  
community composed thereof;

Defendants.

17 TO THE DEFENDANTS:

18 A lawsuit has been started against you in the above entitled court by Eric Rachner  
19 and David Hulton, plaintiffs. Plaintiffs' claim is stated in the written complaint, a copy  
20 of which is served upon you with this summons.

21 In order to defend against this lawsuit, you must respond to the complaint by  
22 stating your defense in writing, and by serving a copy upon the person signing this  
23 summons within 20 days after the service of this summons, excluding the day of service,

SUMMONS - 1

CLEVELAND STOCKMEYER PLLC  
8056 Sunnyside Ave. N.  
Seattle WA 98103  
(206) 419-4385

1 or a default judgment may be entered against you without notice. A default judgment is  
2 one where plaintiff is entitled to what he or she asks for because you have not responded.  
3 If you serve a notice of appearance on the undersigned person, you are entitled to notice  
4 before a default judgment may be entered.

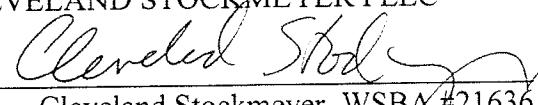
5 You may demand that the plaintiff file this lawsuit with the court. If you do so,  
6 the demand must be in writing and must be served upon the person signing this  
7 summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit  
8 with the court, or the service on you of this summons and the complaint will be void.

9 If you wish to seek the advice of an attorney in this matter, you should do so  
10 promptly so that your written response, if any, may be served on time.

11 This summons is issued pursuant to rule 4 of the superior Court Civil Rules of the  
12 State of Washington.

13  
14 DATED this 5th day of October, 2011.

15 CLEVELAND STOCKMEYER PLLC

16 By: 

17 Cleveland Stockmeyer, WSBA #21636

18 8056 Sunnyside Ave. N.  
19 Seattle, Washington 98103  
(206) 419-4385

20 Attorney for Plaintiffs Eric Rachner and David Hulton

21  
22  
23 SUMMONS - 2

CLEVELAND STOCKMEYER PLLC  
8056 Sunnyside Ave. N.  
Seattle WA 98103  
(206) 419-4385

## EXHIBIT 5

1 Hon. Bruce Heller  
2  
3  
4  
5  
6  
7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

8 ERIC RACHNER, an individual, and DAVID )  
9 HULTON, an individual, )  
10 Plaintiffs, ) No. 11-2-34597-1SEA  
11 vs. ) ) NOTICE OF APPEARANCE  
12 SEATTLE POLICE DEPARTMENT and CITY ) [CLERK'S ACTION REQUIRED]  
13 OF SEATTLE, a Washington municipal )  
14 corporation; MICHELE LETIZIA and JANE )  
15 DOE LETIZIA and the marital community )  
16 composed thereof; BRETT SCHOENBERG and )  
17 JANE DOE SCHOENBERG, and the marital )  
18 community composed thereof; and SETH )  
19 DIETRICH and JANE DOE DIETRICH and the )  
20 marital community composed thereof; )  
21 Defendants. )  
22  
23

TO: Clerk of the above-entitled court; and

TO: Eric Rachner and David Hulton above-named, and their counsel, Cleveland Stockmeyer:

20 PLEASE NOTE that defendants, Seattle Police Department, City of Seattle, Michele  
21 Letizia, Brett Schoenberg and Seth Dietrich by and through their undersigned attorney, and without  
22 waiving any objections as to improper service, process, jurisdiction, venue, or any other CR 12  
23

NOTICE OF APPEARANCE - 1

**PETER S. HOLMES**  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

1 insufficiencies, enter their appearance in this action and request that all future papers and pleadings  
2 in this matter, except original process, be served on this attorney at the address stated below.

3 Please make note that the Seattle City Attorney's Office **mailing address** is:

4 PO Box 94769  
5 Seattle, WA 98124-4769

6 and that the **street/hand-delivery/messenger address** is:

7 600 Fourth Ave., 4<sup>th</sup> Floor  
8 Seattle, WA 98104

9 The post office advises that any **mail** being delivered via the United States Postal Service  
10 having an address other than the above-referenced PO Box will be returned to the sender.

11 DATED this 14<sup>th</sup> day of October, 2011.

12 PETER S. HOLMES  
13 Seattle City Attorney

14 By: s/Brian G. Maxey  
15 Assistant City Attorney  
16 State Bar Number 33279  
17 Telephone: (206) 733-9001  
18 E-mail: [brian.maxey@seattle.gov](mailto:brian.maxey@seattle.gov)

19 s/Dominique' L. Jinhong  
20 Assistant City Attorney  
21 State Bar Number 28293  
22 Telephone: (206) 684-8251  
23 E-mail: [dominique.jinhong@seattle.gov](mailto:dominique.jinhong@seattle.gov)

Seattle City Attorney's Office  
600 Fourth Avenue, 4<sup>th</sup> Floor  
PO Box 94769  
Seattle, WA 98124-4769  
Fax: (206) 684-8284

Attorneys for Defendants

NOTICE OF APPEARANCE - 2

**PETER S. HOLMES**  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

## EXHIBIT 6

https://dja-ecreweb.kingcounty.gov/ecronline/External/CaseContents/AllDocuments.aspx - Windows Internet Explorer

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**INSTRUCTIONS**

► 1) Select the documents you wish to purchase by checking the box to the left of the Sub #. 2) Click on the Get Document button.

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Case Number: 11-2-34597-1 Case Title: RACHNER ET AL VS SEATTLE CITY OF POLICE ET AL Filter By: [- All -](#)

Select	Sub #	Pages	Date	Description
<input type="checkbox"/>	1	74	10/06/2011	COMPLAINT
<input type="checkbox"/>	2	6	10/06/2011	SET CASE SCHEDULE
<input type="checkbox"/>	3	1	10/06/2011	CASE INFORMATION COVER SHEET
<input type="checkbox"/>	4	2	10/06/2011	SUMMONS
<input checked="" type="checkbox"/>	5	1	10/10/2011	AFFIDAVIT/DCLR/CERT OF SERVICE
<input type="checkbox"/>	6	2	10/14/2011	NOTICE OF APPEARANCE /DEFS

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